

122792

Docket NHTSA 2001-8827; Nov. 1

**CAIN & CAIN**  
A PROFESSIONAL LIMITED LIABILITY COMPANY  
ATTORNEYS AND COUNSELORS

Marty G. Cain  
E-mail: mgcain@cainandcain.com

Tamara Beam Cain  
E-mail: tbcain@cainandcain.com

3750 West Main Street, Suite 240  
Norman, Oklahoma 73072

Telephone: (405) 360-6010  
Facsimile: (405) 360-6042

NHTSA-01-8827-2

**Personal and Confidential**

**Facsimile Cover Sheet**

**TO:** Mr. Taylor Vinson, NHTSA  
**FAX:** 202-366-3820  
**FROM:** Tamara Beam Cain ABC  
**DATE:** January 22, 2001  
**RE:** Dan Hill and Associates, Inc.  
Request for Confidentiality

**COMMENTS:**

In regard to your January 18, 2001 letter regarding Dan Hill and Associates, Inc.'s Request for Confidentiality, attached are copies of page 4 and Exhibit C-2 that shall replace the pages previously submitted on January 11. If you have any questions regarding this submission, please contact me. I believe the pages are consistent with our telephone conversation of January 19 and my January 19 letter.

**NO. OF PAGES (including cover sheet): 5**

**Notice:** This facsimile transmission contains information from the law firm of Cain & Cain, P.L.L.C. that may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited. If you have received this facsimile transmission in error, please notify us immediately by telephone (405-360-6010) or by fax (405-360-6042).

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RECEIVED NHTSA

Applicant has, however, made plans to add conspicuity enhancements to the trailer in an effort to increase the visibility of the trailer and further protect the driving public (See Exhibit "B-1", Photograph of Proposed Under-ride Protection). The following conspicuity elements add approximately [REDACTED] to the cost of each trailer:

- High-intensity flashing safety lights;
- Doubling the legally required amount of conspicuity taping at the rear of the trailer;
- Safety signage;
- Red clearance lights that normally emit light in twilight or night-time conditions; and
- Installation of a rear underride protection assembly 28" above the ground and 60" in width.

5. Corporate balance sheets and income statements for 1998, 1999 and 2000 are provided along with the proforma balance sheet and income statement for the fiscal year following denial of the petition (See Exhibit "C-1" and "C-2", Dan Hill & Associates, Inc., Consolidated Balance Sheet and Income Statement with Proforma).

6. If Applicant's petition for renewal of exemption from compliance with Standard No. 224 is denied, the following hardships would likely result:

- A. Applicant would probably have to cease manufacturing operations for Flow Boy trailers produced for domestic sales. Applicant could still produce trailers for international delivery; however, projections for future international sales are not good because of the global financial turmoil affecting Latin and South America. Ultimately, approximately seventy percent (70%) of Applicant's work force would be laid off resulting in McClain County losing one of its largest single employers if Applicant were unable to diversify its manufacturing operations;
- B. Applicant's gross sales would decrease by approximately \$8,313,337 if the exemption renewal were not granted. The projected decrease comes primarily from decreased domestic sales of Flow Boy trailers, as well as a decrease in Flow Boy reconditioning income, defined as Flow Boy Reworks on the Income Statement. International Flow Boy sales have decreased by [REDACTED] over the last two years and continue to be less and less of a contributor to Flow Boy's financial well-being.
- C. Furthermore, Applicant's gross sales volume has become increasingly dependent on Flow Boy trailers and not on its other lines. If a temporary or permanent exemption is granted in 2001, Applicant projects the percent of total corporate gross sales from Flow Boy trailers, Flow Boy parts and Flow Boy reworks to be 51.91%. In 1998 these categories amounted to only 39.01% of the total corporate gross sales. In the event the exemption renewal is not granted, the projected

DAN HILL & ASSOC., INC.  
PROFIT & LOSS STATEMENT

PROFORMA

	Oct-01		Oct-00		Oct-99		Oct-98	
	YEAR TO DATE	RATIO/	YEAR TO DATE	RATIO/	YEAR TO DATE	RATIO/	YEAR TO DATE	RATIO/
	AMOUNT	SALES	AMOUNT	SALES	AMOUNT	SALES	AMOUNT	SALES
SALES								
SALES-FLOW BOY UNITS								
SALES-FLOW BOY REWORKS-USED								
SALES-FLOW BOY PARTS								
SALES-FLOW BOY HALF ROUNDS								
SALES-FLOW BOY PUPS								
SALES-FLOW BOY INTERNATIONAL								
SALES-TOTAL TRUCK								
SALES-MABAR EQUIPMENT								
CASH DISCOUNTS								
FREIGHT OUT								
GROSS SALES								
COST OF GOODS SOLD								
GROSS PROFIT								
GENERAL & ADMINISTRATIVE EXPENSE								
SALES EXPENSE								
NET INCOME FROM OPERATIONS								
MISC INCOME								
GAIN/LOSS ON SALE OF ASSETS								
TOTAL OTHER INCOME								
NET INCOME BEFORE TAXES								
TAX ENTRIES								
NET INCOME AFTER TAXES	<u>-291,947</u>	-2.96%	<u>65,087</u>	0.36%	<u>119,499</u>	0.60%	<u>269,970</u>	1.54%

FOOTNOTES:

1 THE FISCAL YEAR END IS OCTOBER 31

2 PROFORMA OCT 01-NUMBERS ARE BASED ON RETAINING ALL EMPLOYEES

3 THESE THREE AREAS OF SALES WOULD BE EFFECTED

EXHIBIT C-2

Chlor

JAN 18 2001

Ms. Tamara Beam Cain  
General Counsel  
Dan Hill & Associates, Inc.  
3750 West Main Street, Suite 240  
Norman, OK 73072

FAX (405) 360-6042

Re: Dan Hill and Associates, Inc. Request for Exemption From FMVSS No. 224

Dear Ms. Cain:

Thank you for your fax of January 16, 2001, enclosing Federal Express proofs of delivery of certain documents to the agency. We received your hard copies on the 17<sup>th</sup>. One proof indicates that the agency received on December 1, 2000, the briefing materials discussed at the meeting of December 6, 2000, which included a "Petition for Permanent Exemption" dated November 30, 2000. Another proof indicates delivery on December 22, 2000, of a document you have identified as a "Petition for Renewal of Exemption" dated December 21, 2000.

We apologize for the confusion, some of which has been caused by the fact that the petitions were not addressed to the Administrator as our regulations require (49 CFR 555.5(b)(2)). Adherence to this requirement ensures that the National Highway Traffic Safety Administration (NHTSA's) Executive Secretariat records the arrival of exemption petitions. The Executive Secretariat had no records that NHTSA had received either the letter of November 30, 2000, (which was addressed to the Deputy Administrator), or of the letter of December 21, 2000, (which was addressed to the Chief Counsel).

We have located Dan Hill's submission of November 30, 2000, but we have been unable to find the "Petition for Renewal of Exemption." As both the proof of delivery and our Office records indicate, it arrived at our Office at 11:53 a.m. on December 22, 2000. However, we closed at noon that day because of the Christmas holiday and we have been unable to trace the petition beyond that time. Nevertheless, the copies of the petition that you provided with your request for confidentiality of January 11, 2001, will allow us to consider it.

As we advised you on January 12, 2001, even if delivery did occur at NHTSA on December 1, 2000, "the document could be viewed as not meeting the requirements of Section 555.5, because supplementary information was needed." Specifically, in order to toll the expiration date of a temporary exemption, the regulation requires that the application for renewal must be one "that



meets the requirements of Section 555.5.” 49 CFR 555.8(e). Most importantly, Section 555.5(b)(5) requires that an application must “set forth the basis for the application and the information required by Sections 555.6(a), (b), (c), or (d), as appropriate.” The document that Dan Hill filed on December 1, 2000, is titled “Request for Permanent Exemption,” a category of exemption that does not exist. Therefore, the “Request for Permanent Exemption” could not set forth the basis and information required by Section 555.6, does not set forth all the information required for a hardship petition (Section 555.6(a), and therefore cannot be considered a petition that tolls the present expiration date of February 1, 2001. The “Request for Renewal of Exemption” dated December 21, 2000, based on hardship grounds, is the appropriate petition to be considered. Because it was not timely filed we must treat it as a new petition (the principal difference is that any exemption that may be granted will have a new exemption number). We are sorry that this point was not made at the December 6 meeting but it was already too late for Dan Hill to avail itself of the relief provided by Section 555.8(e).

The application fails to meet our procedural requirements in two respects. It does not state the nature of the organization or the state of incorporation (if a corporation), as required by Section 555.5(b)(3). It also fails to specify the total number of trailers produced by Dan Hill in the 12 months preceding the filing of the application, as required by Section 555.6(a)(2)(v) for petitions based on substantial economic hardship. Please provide this information at your earliest convenience.

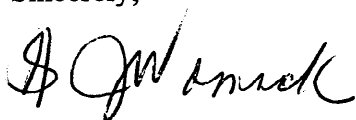
Section 555.5(b)(7) requires an applicant to provide arguments why the granting of an exemption would be in the public interest and consistent with traffic safety objectives. Although the December 21, 2000, document does not contain these arguments, we regard the paragraphs at the end of the November 30, 2000, document titled “Continued Safety Efforts” and “Conclusion” as adequate to fulfill this requirement.

With regard to your request for confidentiality, I note that in the 1999 Federal Register notice asking for comments on Dan Hill’s petition for an extension of its exemption, we quoted its estimated decrease in gross sales, cumulative net income after taxes for the three previous fiscal years, and its projected net income for the current year (64 FR 27353, May 19, 1999). We would like to use the current relevant figures in the forthcoming new notice as support of your hardship argument. Thus, we would not grant confidentiality to the decrease in gross sales figures reported in Paragraph 6.B. (page 4) of the petition of December 21, 2000, or the “net income after taxes” figures in Dan Hill’s “Profit&Loss Statement” (Exhibit C-2). We would grant confidentiality to the cost increases per trailer stated in Paragraph 4 (pages 3 and 4), and Dan Hill’s balance sheet (Exhibit C-1) on the basis that these are privileged financial data. If Dan Hill is agreeable to this disclosure, please waive your request for confidentiality for these items. At the same time, please provide, for the publicly available version of Dan Hill’s petition, a page 4 in which the amount of estimated decreased sales has not been redacted. We also need a copy of Exhibit C-2 that discloses the four “net income after tax” figures and that retains the left hand column identifiers of entries comprising the profit and loss statement (for which the figures have been redacted).

In view of the proximity of the expiration date, we intend to expedite agency action on the application. One way we shall do so is to reduce the public comment period from 30 days to 20 days. Nevertheless, I do not anticipate a decision for at least six weeks after Dan Hill's exemption expires on February 1, 2001.

If you have any questions, you may phone Taylor Vinson (202-366-5263).

Sincerely,

A handwritten signature in cursive script, appearing to read "F. Seales, Jr.", written in dark ink.

*for* Frank Seales, Jr.  
Chief Counsel

**CAIN & CAIN**  
**A PROFESSIONAL LIMITED LIABILITY COMPANY**  
**ATTORNEYS AND COUNSELORS**

**Marty G. Cain**  
E-mail: [mgcain@cainandcain.com](mailto:mgcain@cainandcain.com)

**Tamara Beam Cain**  
E-mail: [tbcaain@cainandcain.com](mailto:tbcaain@cainandcain.com)

**3750 West Main Street, Suite 240**  
**Norman, Oklahoma 73072**

**Telephone: (405) 360-6010**  
**Facsimile: (405) 360-6042**

January 11, 2001

Mr. Taylor Vinson, Counsel  
Legal Division  
National Highway Traffic Safety Administration  
United States Department of Transportation  
400 Seventh Street S.W.  
Washington, D.C. 20590

**Re:   Applicant:   **Dan Hill and**  
                                  **Associates, Inc.**  
                                  **Relief Sought:**   **Petition for**  
                                  **Renewal of Temporary Exemption****

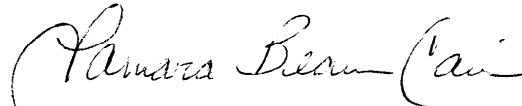
Dear Mr. Vinson:

Please find enclosed a Certificate in Support of Request for Confidentiality for the Petition for Renewal of Exemption filed by Dan Hill and Associates, Inc. on December 1, 2000 and supplemented on December 22, 2000. I have enclosed two copies of the Petition which have been edited to delete the information to be withheld.

I understand that Dan Hill and Associates, Inc.'s Temporary Exemption will not expire on February 1, 2001 and that the Temporary Exemption will remain in effect until the National Highway Traffic Safety Administration has taken final action on Applicant's Petition for Renewal of Exemption.

Should you require additional information, please contact me.

Sincerely yours,



Tamara Beam Cain, General Counsel  
Dan Hill and Associates, Inc.

CC:   Deputy Director Rosalyn G. Millman  
      Michael R. Huntley, Safety Standards Engineer  
      Mr. Liu, Safety Standard Engineer


**BEFORE THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

**APPLICANT:** DAN HILL AND ASSOCIATES, INC. )  
 )  
**RELIEF SOUGHT:** RENEWAL OF TEMPORARY EXEMPTION ) CAUSE NO.  
 FROM COMPLIANCE WITH FMVSS )  
 NO. 224 )

## CERTIFICATE IN SUPPORT OF REQUEST FOR CONFIDENTIALITY

I, Tamara Beam Cain, pursuant to the provisions of 49 CFR 512, state as follows:

1. I am General Counsel for Dan Hill and Associates, Inc. ("Applicant") and I am authorized by Applicant to execute documents on behalf of Applicant;
2. The information contained in Applicant's Petition for Renewal of Exemption which was filed on December 1, 2000 and supplemented on December 22, 2000 contains confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. §522(b)(4);
3. I have personally inquired of the responsible personnel of Applicant who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside Dan Hill and Associates, Inc.
4. Based upon such inquiries, to the best of my knowledge, information and belief the information for which Applicant has claimed confidential treatment has never been released or become available outside Dan Hill and Associates, Inc. without a Confidentiality Agreement except as hereinafter specified:
  - a) Lenders and potential lenders; and
  - b) Business consultants.
5. I make no representations beyond those contained in this certificate and in particular, I make no representations as to whether this information may become available outside Dan Hill and Associates, Inc. because of unauthorized or inadvertent disclosure except as stated in Paragraph 4; and
6. I certify under penalty of perjury that the foregoing is true and correct. Executed on this 11<sup>th</sup> day of January, 2001.

  
Tamara Beam Cain, General Counsel  
Dan Hill and Associates, Inc.

**BEFORE THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

<b><u>APPLICANT:</u></b>	<b>DAN HILL AND</b>	)	
	<b>ASSOCIATES, INC.</b>	)	
		)	<b>DOCKET NO.</b>
<b><u>RELIEF SOUGHT:</u></b>	<b>RENEWAL OF TEMPORARY</b>	)	
	<b>EXEMPTION FROM</b>	)	
	<b>COMPLIANCE WITH FEDERAL</b>	)	
	<b>MOTOR VEHICLE SAFETY</b>	)	
	<b>STANDARD NO. 224 FOR</b>	)	
	<b>ONE YEAR</b>	)	

**PETITION FOR RENEWAL OF EXEMPTION**

**DAN HILL AND ASSOCIATES, INC.** ("Applicant") files this Supplemental Petition for Renewal of National Highway Traffic Safety Administration ("NHTSA") Temporary Exemption No. 98-1 from 49 C.F.R. §571.224 Motor Vehicle Safety Standard No. 224 Rear Underride Protection ("Standard No. 224") which expires February 1, 2001. This Petition for Renewal is intended to supplement the Petition and request for relief dated November 30, 2000 that was filed by Applicant with NHTSA on December 1, 2000. Applicant's original Petition for Exemption which was filed with NHTSA on October 15, 1997 and its Petition for Renewal of Exemption dated November 10, 1998 are incorporated by reference herein and made a part of this Petition. Applicant has tried in good faith to comply with Standard No. 224 within the temporary exemption period granted by NHTSA, but finds that unless it is granted an additional year to file and adjudicate its Petition for Rulemaking and pursue a change in Standard No. 224, Applicant will suffer substantial economic hardship.

Applicant manufactures and sells a horizontal discharge trailer ("Flow Boy") that is used in the road construction industry to deliver asphalt and other road building materials to the construction site. Applicant asserts that the general public benefits from better and improved roads as a result of the Flow Boy discharge system. Applicant also asserts that contractors benefit

from the Flow Boy discharge system because they operate more efficiently, experience greater safety records (which results in lower costs), and produce better quality roads. The Flow Boy trailer offers the following advantages over a standard dump body truck or trailer that must raise its bed and rely on gravity to unload road building materials:

1. **Avoidance of Overhead Obstructions.** Dangerous overhead obstructions, such as utility lines and overpasses, can be avoided with the Flow Boy delivery system;
2. **Stability.** The Flow Boy trailer eliminates the danger of tipping over on elevated steep grades, uneven terrain, and in high wind conditions;
3. **Insulation.** Flow Boy trailers are insulated thereby allowing the contractor additional time to load and unload the asphalt before it begins to set;
4. **Reduction of Segregation.** The design of the Flow Boy reduces asphalt material segregation during transport; and
5. **Flexibility.** Flow Boys allow the contractor greater flexibility by controlling the rate of discharge of the road building material.

During the road building process, the Flow Boy trailer discharges asphalt or other road building material into a lay down machine ("paver") which overlays the road surface. The attachment of a **fixed** rear impact guard prevents the Flow Boy from connecting to a paver.

In an attempt to comply with Standard No. 224, Applicant has explored a fixed rear impact guard, a removable rear impact guard, a "swing in" retractable rear impact guard, and a "swing out" retractable rear impact guard. All of these attempts to comply have been unsuccessful because of design limitations, worker safety, and accumulation of asphalt paving material on the guard.

Applicant's final attempt at compliance was a "swing up" style tailgate with the protective bumper attached to the tailgate. The "swing up" style tailgate was quite costly and it significantly added to the weight of the trailer thereby reducing the available payload. Most importantly, the bumper presented safety and liability issues because the design of the trailer would have allowed serious injury or death to a flagman or worker caught between the paver and the bumper while the tailgate was being lifted. On August 29, 2000 Applicant was dealt a final blow when its engineering firm advised that it did not believe that the ICC bumper would meet the certification

requirements of Standard No. 224 (See Exhibit "A", August 29, 2000 Letter from Tech, Inc. Engineering solutions to Dan Hill and Associates, Inc.) Having exhausted all available options, Applicant intends to file a Petition for Rulemaking with NHTSA requesting a change in the definition of "special purpose vehicle" as defined in Standard No. 224 thereby gaining permanent exemption from compliance. Accordingly, Applicant submits the following in support of its Petition for Renewal of Exemption:

1. Applicant, Dan Hill and Associates, Inc., d/b/a Flow Boy Manufacturing, Post Office Box 720660, Norman, Oklahoma 73070, is a corporation incorporated under the laws of the State of Oklahoma.
2. Applicant requests a renewal of NHTSA Temporary Exemption No. 98-1 from 49 C.F.R. §571.224 Motor Vehicle Safety Standard No. 224 Rear Underride Protection, expiring February 1, 2001, which requires installation of rear impact guards on trailers and semi-trailers with a gross vehicle weight rating of 4536 kg or more.
3. Standard No. 224 affects the following equipment (collectively referred to as "Flow Boy") manufactured by Applicant:
  - A. ST-1000 Semi-Trailer;
  - B. CB-4000 Semi-Trailer; and
  - C. CB-5000 Semi-Trailer.
4. Because Applicant cannot comply with Standard No. 224, the cost of modification referred to in 49 C.F.R. §555.6(a)(1)(ii) and (iii) is not applicable in this situation and has not been included in this Petition. However, as a frame of reference, Applicant submits that the "swing up" style tailgate that has been eliminated as a method of compliance because of its failure to meet the Standard No. 224 plasticity requirements increases the cost on a per trailer basis by [REDACTED] This cost estimate is only included because it demonstrates a **minimum** cost of modification.

# CONFIDENTIAL

Applicant has, however, made plans to add conspicuity enhancements to the trailer in an effort to increase the visibility of the trailer and further protect the driving public (See Exhibit "B-1", Photograph of Proposed Under-ride Protection). The following conspicuity elements add approximately [REDACTED] to the cost of each trailer:

- High-intensity flashing safety lights;
- Doubling the legally required amount of conspicuity taping at the rear of the trailer;
- Safety signage;
- Red clearance lights that normally emit light in twilight or night-time conditions; and
- Installation of a rear underride protection assembly 28" above the ground and 60" in width.

5. Corporate balance sheets and income statements for 1998, 1999 and 2000 are provided along with the proforma balance sheet and income statement for the fiscal year following denial of the petition (See Exhibit "C-1" and "C-2", Dan Hill & Associates, Inc., Consolidated Balance Sheet and Income Statement with Proforma).
6. If Applicant's petition for renewal of exemption from compliance with Standard No. 224 is denied, the following hardships would likely result:
  - A. Applicant would probably have to cease manufacturing operations for Flow Boy trailers produced for domestic sales. Applicant could still produce trailers for international delivery; however, projections for future international sales are not good because of the global financial turmoil affecting Latin and South America. Ultimately, approximately seventy percent (70%) of Applicant's work force would be laid off resulting in McClain County losing one of its largest single employers if Applicant were unable to diversify its manufacturing operations;
  - B. Applicant's gross sales would decrease by approximately [REDACTED] if the exemption renewal were not granted. The projected decrease comes primarily from decreased domestic sales of Flow Boy trailers, as well as a decrease in Flow Boy reconditioning income, defined as Flow Boy Reworks on the Income Statement. International Flow Boy sales have decreased by [REDACTED] over the last two years and continue to be less and less of a contributor to Flow Boy's financial well-being.
  - C. Furthermore, Applicant's gross sales volume has become increasingly dependent on Flow Boy trailers and not on its other lines. If a temporary or permanent exemption is granted in 2001, Applicant projects the percent of total corporate gross sales from Flow Boy trailers, Flow Boy parts and Flow Boy reworks to be 51.91%. In 1998 these categories amounted to only 39.01% of the total corporate gross sales. In the event the exemption renewal is not granted, the projected



percentage of gross sales volume resulting from these Flow Boy sales would decrease to 16.37%. This number would continue to decrease as Flow Boy parts, reworks and trailer sales gradually decreased.

- D. In the event that the exemption renewal is not granted, gross sales would plummet as of February 1, 2001, while costs related to real estate and equipment leases would remain constant until leases expired. Applicant would also have to settle accounts with suppliers for goods ordered and canceled.
  - E. Ultimately, Applicant would likely lose all available lines of credit, and be put out of business if it was unable to adequately diversify its manufacturing operations;
  - F. Applicant's profitability stands to dramatically increase in the next few years as the direct result of contractors preparing for increased road building as the result of the significant increase in federal and state transportation dollars that are being allocated to road construction. If the exemption is denied, Applicant would not experience any sales increase. Moreover, Applicant would also lose all existing Flow Boy trailer sales revenue;
  - G. The road construction industry would be adversely affected because it would lose a safe alternative to hauling hot mix asphalt in conventional dump trucks. Accordingly, the likelihood of worker's on the job injuries would increase; and
  - H. The quality of roads could be adversely affected if conventional dump trucks are contractors' only source of hauling hot mix asphalt because of the following:
    - 1. The sudden surge of materials which can happen during the unloading of conventional dump trucks can result in the accidental discharge of materials and the overloading of the paver hopper.
    - 2. The segregation of aggregate road building material which is a common problem associated with the delivery of hot mix asphalt in conventional dump trucks; and
    - 3. The inability of the conventional dump truck to deliver hot mix asphalt in a workable condition over long distances.
7. Applicant has worked diligently over the past few years to comply with Standard Nos. 223 and 224. A complete chronology of Applicant's compliance efforts are set forth in Applicant's Petition for Exemption and Petition for Renewal of Exemption. Following are the efforts made by Applicant since receiving a renewal of its exemption on September 1, 1999:

- A. There is no “swing in” retractable impact guard that can comply with the plasticity requirements and meet the certification requirements of Standard No. 223. Accordingly, Applicant worked for a number of months trying to design a bumper that would retract in such a way to allow interface with the paver. Applicant’s product specialists developed a “swing up” style bumper and mounted the bumper on the tailgate so that it was hydraulically raised to the height of the trailer itself (See Exhibit “B-3”, Photograph of Prototype Underride Protection). Because it was completely removed from the paver interface, all problems associated with asphalt accumulation were eliminated. However, On August 29, 2000 Applicant was notified by its design engineers that it was unlikely that the prototype “swing up” bumper would meet the certification requirements (See Exhibit “A”, August 29, 2000 Letter from Tech, Inc. Engineering solutions to Dan Hill and Associates, Inc.).
8. Applicant has attempted to comply with Standard No. 224. The following alternative methods of compliance have proved unsuccessful and have been eliminated for the following reasons:
- A. **Installation of Fixed Rear Impact Guard.** A fixed rear impact guard installed pursuant to the space limitations set forth in Standard No. 224 prevents the Flow Boy from connecting to a paver, rendering the Flow Boy trailer virtually useless (See Exhibit “B-2”, Photograph of Fixed Underride Protection Bumper);
- B. **Redesign of Pavers.** Manufacturers of pavers have denied Applicant’s requests to redesign their pavers to accommodate rear impact guards;
- C. **Installation of Removable Rear Impact Guard.** Applicant has eliminated this alternative because of the likelihood of workers failing to replace the rear impact guard before transit, as well as the likelihood of injury to the workers because of the weight of the bumper;
- D. **Installation of Retractable Rear Impact Guard.** Applicant has eliminated this alternative because of the accumulation of asphalt on the guard, the excess weight, and the design defects; and
- E. **Installation of a “Swing-up” Style Tailgate with Attached Bumper.** Applicant has eliminated this alternative because of its inability to meet certification requirements, as well as the possibility of serious injury to the workers because of the possibility of a worker being caught between the paver and the tailgate while the tailgate was being hydraulically lifted.
9. In the coming weeks, Applicant intends to file a Petition for Rulemaking with NHTSA requesting a change in the definition of “special purpose vehicle” as defined in Standard No. 224 thereby gaining a permanent exemption from compliance.

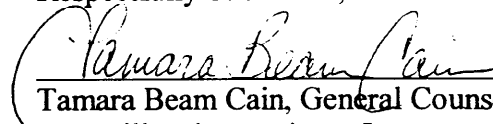
10. Applicant has produced 151 units in the twelve (12) month period prior to filing this Petition for Exemption.
11. The purpose of Standard 224 “is to reduce the number of deaths and serious injuries occurring when light duty vehicles impact the rear of trailers. . .” Applicant contends that application of this standard to the Flow Boy trailer will not further the purpose of the Standard and that a permanent, as well as temporary, exemption would be in the public interest because of the following:
  - A. **Small Number of Flow Boy Trailers.** Because of low production numbers, there are very few trailers of this type on the highways today. Less than .05% of the trailers produced in the United States annually are Flow Boy trailers.. All other types of trailers account for the other 99.95% of the market;
  - B. **Limited Highway Use.** Because of the proximity of hot mix plants to road construction sites the trailers spend very limited amounts of time on the highways. Accordingly, the likelihood of this type of trailer being involved in a rear-end collision on the highway is extremely minimal. The average time spent on the open road is quite small because the asphalt material will harden and become worthless in a short amount of time; and
  - C. **Proximity of Axle and Tires.** The location of the rear-most axle and the accompanying tires place the maximum forward movement of a motor vehicle involved in a rear-end collision at 33” (See Exhibit “B-1”, Photograph of Proposed Underride Protection). Accordingly, the tires act as a buffer and reduce the likelihood of impact with the semi-trailer and the vehicle’s windshield or interior of the vehicle significantly.
12. By separate letter, Applicant will specify the parts of the information and data contained in this Petition for Renewal of Exemption that it requests be withheld from public disclosure.
13. Pursuant to 49 C.F.R. §553 Applicant intends to file a Petition for Rulemaking with NHTSA seeking to change the definition of a “special purpose vehicle” thereby gaining permanent exemption from compliance with Standard No. 224.

**Applicant** respectfully requests that the NHTSA renew its exemption for compliance with Standard No. 224 for a period of one year on the basis of substantial economic hardship so

that it can file and adjudicate a Petition for Rulemaking pursuant to 49 C.F.R. §553 and obtain a permanent exemption from compliance.

Dated this 21st day of December, 2000.

Respectfully Submitted,

  
\_\_\_\_\_  
Tamara Beam Cain, General Counsel  
Dan Hill and Associates, Inc.

# **TECH, INC.**

## ENGINEERING SOLUTIONS

August 29, 2000

Mr. David Griffis, Executive Vice President  
Dan Hill & Associates  
P.O. Box 720660  
Norman, OK 73070-4500

Re: Retractable ICC Bumper

Dear Mr. Griffis:

The new ICC Bumper that I inspected per your request on Monday, August 14<sup>th</sup> at your facility in Norman has me concerned. As usual, the creativity demonstrated by your company is impressive, and I appreciate what you are trying to accomplish. I realize that it would be necessary to retract the bumper out of the way in order for the trailer to become engaged with the paver. Also if the bumper were to remain below the discharge chute it would certainly catch material fall off and create a hazard, as this material broke loose in transit. Thus, I understand the technical reasons for needing to retract the bumper.

My staff and I reviewed the photographs I took while there, and the concerns are as follows:

1. Our consensus is that the tailgate, hinges and air cylinders will not meet the criteria of the Standard 224-plasticity requirement, as I understand it.
2. It is unlikely that the suppliers of the above mentioned components would support Dan Hill & Associates in the certification process or if a lawsuit occurred due to a rear-end collision involving this retractable bumper.
3. The bumper is a potential safety hazard. It has to be raised before discharging the load into a paver. If the driver were to raise the gate at an inopportune moment and a flagman or a trailer stager is in between the paver and the bumper while the gate and bumper is rising, the bumper could cause serious injury or death.
4. The materials and labor costs associated with this bumper design, including the tailgate, cylinders, solenoids, and metal fabrication may be cost prohibitive when trying to win business in a highly competitive, yet narrow marketplace.
5. The additional weight added by the tailgate, cylinders, and linkages will likely put your product at a significant competitive disadvantage since empty trailer weight is such an over-riding concern of your customers.

**EXHIBIT A**

Obviously, TECH wants to continue in a relationship with Dan Hill & Associates supplying outside engineering support: but it is simply not possible for me to give you an accurate estimate on what will be required to get this bumper certified. If TECH undertakes the project, we will have to bid the project on a cost-plus basis. Additionally, there can be no guarantee that the end result will be a stamp of approval for certification of a retractable bumper for Dan Hill & Associates. Your company's idea of having a retractable bumper is an admirable attempt at trying to comply with the regulations, but in our engineering judgment, we believe this bumper could be more of a liability than an asset.

I would be happy to discuss this further if desired.

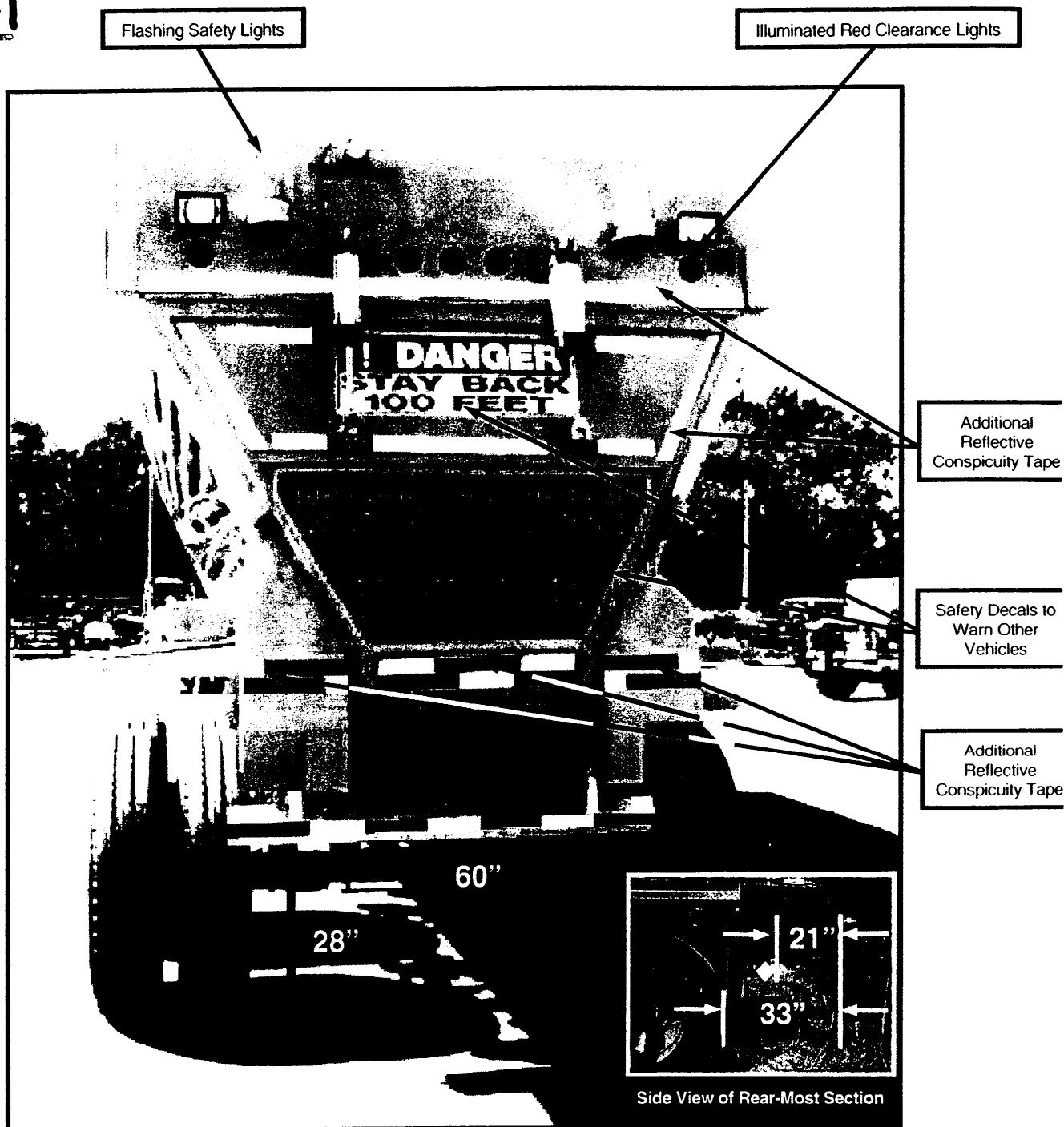
Sincerely,



Mark Prather, P.E.  
TECH, Inc.



CC: Mr. Chip Herring  
Product Specialist  
FlowBoy Manufacturing, Inc.



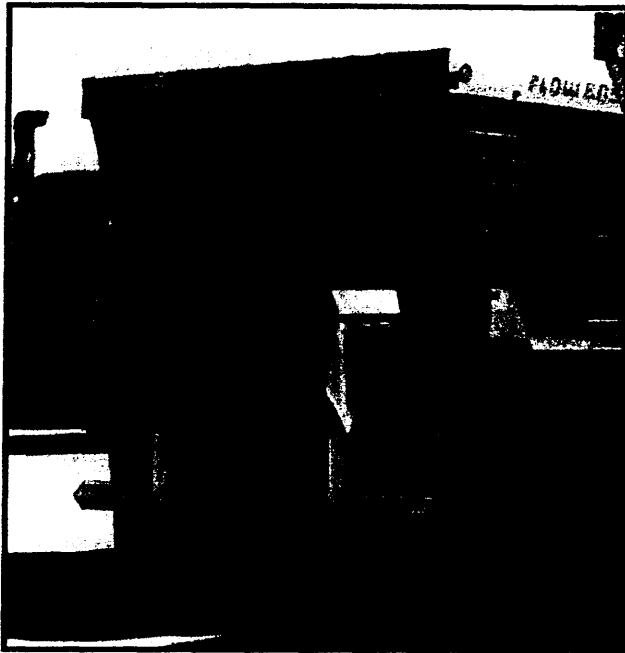
### Under-Ride Protection as Proposed By Dan Hill & Associates Inc.

#### POSSIBLE TO IMPLEMENT

A combination of a natural Under-Ride Protection (formed by the rear tire faces and the additional steel bumper) plus high-visibility, flashing safety lights and safety signage as well as light reflective tape allows the Flow Boy product to function in its vocation and still offer significant safety to the general driving public.

(Note that the vehicle mud-flaps have been removed in order to better illustrate the proximity of the rear tire face to the extreme rear of the trailer.)

## EXHIBIT B-2



**An Example of the Under-Ride Protection  
Design as Mandated by  
Standard No. 224**

**IMPOSSIBLE TO IMPLEMENT**

Note how the installation prevents *any* interface with an asphalt paving device and also provides a place for payload material to accumulate, creating a potential for danger to the traffic following or near the trailer.

## EXHIBIT B-3



**An Example of the Prototype  
Under-Ride Protection as  
Designed by Dan Hill & Associates Inc.**

**IMPOSSIBLE TO IMPLEMENT**

Note that this is a 'swing-up' style gate with protective bumper attached. There is a very significant weight, cost and safety penalty for this solution, which is highly unlikely to meet the Standard 223 requirements.



# CONFIDENTIAL

## DAN HILL & ASSOC., INC. BALANCE SHEET

PROFORMA 2001	ACTUAL 2000	ACTUAL 1999	ACTUAL 1998
------------------	----------------	----------------	----------------

### CURRENT ASSETS

- CASH
- CUSTOMER DEPOSITS
- ACCOUNTS RECEIVABLE
- NOTES RECEIVABLE
- EMPLOYEE RECEIVABLE
- PREPAID INSURANCE ACCTS
- PREPAID INCOME TAX

- INVENTORY-NORMAN
- INVENTORY-FAIRVIEW
- DEPOSITS

### TOTAL CURRENT ASSETS

### FIXED ASSETS

- AUTOMOBILES
- OFFICE FURN & FIXTURES
- MACHINERY & EQUIPMENT
- JIGS & FIXTURES
- LEASE HOLD IMPROVEMENTS
- ACCUM. DEPRECIATION

### TOTAL FIXED ASSETS

### TOTAL ASSETS

### CURRENT LIABILITIES

- ACCOUNTS PAYABLE
- NOTES PAYABLE-BANKS
- NOTES PAYABLE-CREDIT LINE
- NOTES PAYABLE-INSTALLMENTS
- NOTES PAYABLE-SHAREHOLDERS
- ACCRUED ACCOUNTS
- DEFERRED TAXES

### TOTAL CURRENT LIABILITIES

- LONG TERM NOTES PAYABLE

### TOTAL LIABILITIES

### STOCKHOLDERS' EQUITY

- COMMON STOCK
- REDEMPTION OF STOCK
- ADDITIONAL PAID IN CAPITAL
- RETAINED EARNINGS
- NET PROFIT/LOSS

### TOTAL STOCKHOLDERS' EQUITY

### TOTAL LIABILITIES & EQUITY

# EXHIBIT C-1

DAN HILL & ASSOC., INC.  
PROFIT & LOSS STATEMENT

PROFORMA

	Oct-01		Oct-00		Oct-99		Oct-98	
	YEAR TO DATE	RATIO/	YEAR TO DATE	RATIO/	YEAR TO DATE	RATIO/	YEAR TO DATE	RATIO/
	AMOUNT	SALES	AMOUNT	SALES	AMOUNT	SALES	AMOUNT	SALES
SALES								
SALES-FLOW BOY UNITS								
SALES-FLOW BOY REWORKS-USED								
SALES-FLOW BOY PARTS								
SALES-FLOW BOY HALF ROUNDS								
SALES-FLOW BOY PUPS								
SALES-FLOW BOY INTERNATIONAL								
SALES-TOTAL TRUCK								
SALES-MABAR EQUIPMENT								
CASH DISCOUNTS								
FREIGHT OUT								
GROSS SALES								
COST OF GOODS SOLD								
GROSS PROFIT								
GENERAL & ADMINISTRATIVE EXPENSE								
SALES EXPENSE								
NET INCOME FROM OPERATIONS								
MISC INCOME								
GAIN/LOSS ON SALE OF ASSETS								
TOTAL OTHER INCOME								
NET INCOME BEFORE TAXES								
TAX ENTRIES								
NET INCOME AFTER TAXES			65,087	0.36%	119,499	0.60%	269,970	1.54%

FOOTNOTES:

- 1 THE FISCAL YEAR END IS OCTOBER 31
- 2 PROFORMA OCT 01-NUMBERS ARE BASED ON RETAINING ALL EMPLOYEES
- 3 THESE THREE AREAS OF SALES WOULD BE EFFECTED

EXHIBIT C-2

CONFIDENTIAL

**TAMARA BEAM CAIN**  
Attorney and Counselor

3750 West Main  
Suite 106  
Norman, Oklahoma 73072

Telephone: 405-360-6010  
Facsimile: 405-360-6042  
E-mail: [tcain@telepath.com](mailto:tcain@telepath.com)

December 21, 2000

Frank Seales, Jr., Chief Counsel  
U.S. Department of Transportation  
National Highway Traffic Safety Administration  
400 Seventh Street, S.W.  
Washington, D.C. 20590

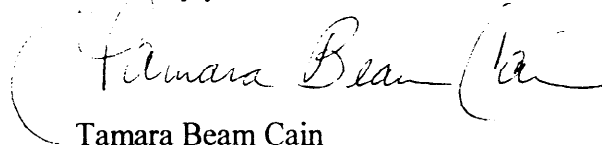
**Re: Petition for Renewal of Temporary  
Exemption  
Applicant: Dan Hill and  
Associates, Inc.**

Dear Mr. Seales:

Please find enclosed the original and two (2) copies of Applicant Dan Hill and Associates, Inc.'s Supplemental Petition for Renewal of Exemption, supplementing its December 1, 2000 filing with NHTSA.

Applicant requests that certain competitive information and data be withheld from public disclosure. I will be sending a Certificate in Support of Request for Confidentiality by separate letter. Also, I am enclosing two additional copies of the Petition. Please file-stamp these and return to me in the enclosed envelope.

Sincerely yours,



Tamara Beam Cain

CC: Rosalyn G. Millman (w/enclosure)  
Michael R. Huntley (w/enclosure)  
Taylor Vinson (w/enclosure)  
Mr. Liu, Safety Standards Engineer (w/enclosure)

# **TECH, INC.** ENGINEERING SOLUTIONS

August 29, 2000

Mr. David Griffis, Executive Vice President  
Dan Hill & Associates  
P.O. Box 720660  
Norman, OK 73070-4500

Re: Retractable ICC Bumper

Dear Mr. Griffis:

The new ICC Bumper that I inspected per your request on Monday, August 14<sup>th</sup> at your facility in Norman has me concerned. As usual, the creativity demonstrated by your company is impressive, and I appreciate what you are trying to accomplish. I realize that it would be necessary to retract the bumper out of the way in order for the trailer to become engaged with the paver. Also if the bumper were to remain below the discharge chute it would certainly catch material fall off and create a hazard, as this material broke loose in transit. Thus, I understand the technical reasons for needing to retract the bumper.

My staff and I reviewed the photographs I took while there, and the concerns are as follows:

1. Our consensus is that the tailgate, hinges and air cylinders will not meet the criteria of the Standard 224-plasticity requirement, as I understand it.
2. It is unlikely that the suppliers of the above mentioned components would support Dan Hill & Associates in the certification process or if a lawsuit occurred due to a rear-end collision involving this retractable bumper.
3. The bumper is a potential safety hazard. It has to be raised before discharging the load into a paver. If the driver were to raise the gate at an inopportune moment and a flagman or a trailer stager is in between the paver and the bumper while the gate and bumper is rising, the bumper could cause serious injury or death.
4. The materials and labor costs associated with this bumper design, including the tailgate, cylinders, solenoids, and metal fabrication may be cost prohibitive when trying to win business in a highly competitive, yet narrow marketplace.
5. The additional weight added by the tailgate, cylinders, and linkages will likely put your product at a significant competitive disadvantage since empty trailer weight is such an over-riding concern of your customers.

Obviously, TECH wants to continue in a relationship with Dan Hill & Associates supplying outside engineering support; but it is simply not possible for me to give you an accurate estimate on what will be required to get this bumper certified. If TECH undertakes the project, we will have to bid the project on a cost-plus basis. Additionally, there can be no guarantee that the end result will be a stamp of approval for certification of a retractable bumper for Dan Hill & Associates. Your company's idea of having a retractable bumper is an admirable attempt at trying to comply with the regulations, but in our engineering judgment, we believe this bumper could be more of a liability than an asset.

I would be happy to discuss this further if desired.

Sincerely,



Mark Prather, P.E.  
TECH, Inc.



CC: Mr. Chip Herring  
Product Specialist  
FlowBoy Manufacturing, Inc.

# DAN HILL & ASSOCIATES, INC.

dba Flow Boy Mfg.  
dba Total Truck & Trailer  
dba Mabar

P.O. Box 720660  
Norman, OK 73070-4500

405-329-3765  
FAX 405-329-8588

November 30, 2000

Rosalyn G. Millman, Deputy Director  
National Highway Traffic Safety Administration  
400 Seventh Street S.W.  
Washington, D.C. 20590

**Re: Dan Hill and Associates, Inc.  
Request for Permanent Exemption  
from MVSS No. 224**

Deputy Director Millman:

After four years of good faith, yet unsuccessful attempts to comply with the requirements of Federal Motor Vehicle Safety Standard No. 224; Rear Impact Protection, Dan Hill and Associates, Inc. seeks relief for its Flow Boy trailers from compliance with Standard No. 224. On February 1, 2001 the National Highway Traffic Safety Administration ("NHTSA") Temporary Exemption No. 98-1 granted to Dan Hill and Associates, Inc. will expire. Accordingly, our company requests a permanent exemption or some other type of permanent relief from our Flow Boy trailer's compliance with Standard No. 224.

## **General Information Regarding Flow Boy Trailers**

The Flow Boy trailer is a horizontal discharge trailer used in the road construction industry to deliver asphalt and other road building materials to the construction site. The Flow Boy is designed to interface with a paving machine ("paver"). The Flow Boy, with its hydraulically controlled horizontal discharge system, discharges hot mix asphalt at a controlled rate into a paver which overlays the road surface with asphalt material. Installation of a rear impact guard pursuant to Standards Nos. 223 and 224, would prevent the Flow Boy from connecting to the paver. The trailer would be rendered useless for its intended purpose.

Ironically, safety is one of the major advantages of a Flow Boy delivery system. Without Flow Boy trailers, road builders would be forced to use standard dump body trucks or trailers which raise their beds and rely on gravity to unload the asphalt. A Flow Boy trailer offers the following advantages for road builders:

1. **Avoidance of Overhead Obstructions.** Dangerous overhead obstructions, such as utility lines and overpasses, can be avoided with the Flow Boy trailer;

2. **Stability.** The Flow Boy trailer eliminates the danger of tipping over on elevated steep grades, uneven terrain, and in high wind conditions;
3. **Insulation.** The Flow Boy trailer is insulated thereby allowing the road builder additional time to load and unload the asphalt before it begins to set;
4. **Reduction of Segregation.** The design of the Flow Boy trailer reduces asphalt material segregation during transport; and
5. **Flexibility.** The Flow Boy trailer allows the road builder greater flexibility by controlling the rate of discharge of the road building material.

### **Public Interest**

Our company is committed to the safety of the general driving public, as well as the safety of those individuals who build our country's roadways. In addition to safety, we believe that our company serves the public interest in other ways. The general public benefits from better and longer lasting roads. Contractors can build better quality roads using the Flow Boy delivery system because of the decreased segregation and flexibility of the system. The public interest is also served when road construction costs are reduced because of the increased efficiency and increased safety benefits of the Flow Boy delivery system.

The purpose of Standard No. 224 "is to reduce the number of deaths and serious injuries occurring when light duty vehicles impact the rear of trailers..." The Flow Boy trailer, whether it is equipped with a bumper guard or not equipped with a bumper guard, will not impact this NHTSA objective for the following reasons:

1. **Small Number of Flow Boy Trailers.** Less than .05 % of the trailers produced in the United States annually are Flow Boy trailers. All other types of trailers account for the other 99.95% of the market; and
2. **Limited Highway Use.** The normal operating condition for a Flow Boy trailer is "off-road" at a raw material quarry or asphalt or concrete production plant. The average time spent on the open road is quite small because the asphalt material will harden and become worthless in a short amount of time.
3. **Proximity of Axle and Tires.** The location of the rear-most axle and the accompanying tires place the maximum forward movement of a motor vehicle involved in a rear-end collision at 33".

### **Efforts to Comply with Standard No. 224**

Because of the special design of the Flow Boy trailer and its narrow use in a niche market, Dan Hill and Associates, Inc. believed that its Flow Boy trailer would be designated a "special purpose vehicle" and exempted from compliance with Standard No. 224. Our first contacts with NHTSA began in the spring of 1997 when I contacted Paul Atelsek regarding the applicability of Standard No. 224 to the Flow Boy trailer. He advised that a similar trailer manufacturer had requested an interpretation on the applicability of Standard No. 224 to its horizontal discharge trailer and that he would send me a copy of NHTSA's determination. On July 17, 1997 NHTSA sent me a copy of

its letter to Red River Mfg. advising that its horizontal discharge trailer was not a “special purpose vehicle”.

Since that time our company’s efforts to comply with Standard No. 224 have been extensive. We have contacted paving machine manufacturers regarding the possibility of their redesigning their pavers to accommodate a Flow Boy trailer equipped with a Standard No. 223 rear impact bumper. Our requests were denied. We sent our Product specialist to Germany to view the Underride Protection Guards installed on a Flow Boy trailer by one of our German customers. The technology proved inapplicable, because of the differences between the German pavers and America pavers.

We have explored a fixed rear impact guard, a removable rear impact guard, a “swing out” retractable rear impact guard, and a “swing in” retractable rear impact guard. All of these attempts to comply were unsuccessful, because of design limitations, worker safety, and accumulation of asphalt paving material on the guard. Our final attempt at compliance was a “swing up” style gate with the protective bumper attached to the gate. We were not pleased with the result, because it significantly reduced the payload and it added to the cost of the trailer. The final blow came when our engineering firm advised that it did not believe that the ICC bumper would meet the certification requirements of Standard No. 224.

A complete chronology of our compliance efforts are set forth in the attached Petition for Exemption and Petition for Renewal of Exemption, following is a brief summary:

July 17, 1997	Letter from John Womack, Acting Chief Counsel, NHTSA, to Red River Mfg. advising that the horizontal discharge trailer is not a “special purpose vehicle” pursuant to No. 224 and therefore, is not exempt from compliance.
Sept. 17, 1997	Letter from Frank W. Whitcomb Construction Corp. to Federal Highway Administration requesting permanent exemption for Flow Boy.
Sept. 24, 1997	Letter from Congressman J.C. Watts’s Field Representative to Dan Hill and Associates, Inc. regarding special purpose vehicle designation and directing Dan Hill and Associates, Inc. to submit a request for interpretation in regard to applicability of No. 224 to Flow Boy.
Oct. 13, 1997	Letter from Warren Paving Inc. to NHTSA requesting reconsideration of applicability of No. 224 to Flow Boy.
Oct. 14, 1997	Letter from Dan Hill and Associates, Inc. to NHTSA enclosing Petition for Exemption and advising NHTSA of Congressman Watts’s suggestion that NHTSA should render a formal interpretation regarding the applicability of No. 224.
Oct. 15, 1997	Dan Hill and Associates, Inc. Petition for Exemption filed with NHTSA.
Nov. 3, 1997	Letter from Dan Hill and Associates, Inc. requesting a formal interpretation as to the applicability of No. 224 to the Flow Boy.
Nov. 26, 1997	NHTSA response to Warren Paving Inc.’s request for reconsideration.



- January 9, 1998 Tamara Cain telephone conversation with NHTSA regarding status of Rule interpretation and Petition for Exemption.
- January 20, 1998 NHTSA grants Dan Hill and Associates, Inc. Temporary Exemption No. 98-1 No. 224, expiring February 1, 1999.
- Nov. 10, 1998 Letter from Cain to NHTSA enclosing Petition for Renewal of Temporary Exemption. Petition for Renewal of Exemption (page 10) requests additional information regarding the Petition for Rulemaking filed by Thiegman Tailgates, Inc. which apparently sought to change the definition of a special purpose vehicle.
- Dec. 21, 1998 NHTSA letter to Tamara Cain acknowledging Tamara Cain's request for additional information regarding Petition for Rulemaking filed by Thiegman Tailgates, Inc.
- Feb. 26, 1999 NHTSA letter to Tamara Cain reconfirming Tamara Cain's request for additional information regarding Petition for Rulemaking filed by Thiegman Tailgates, Inc.
- Sept. 1, 1999 NHTSA issues extension of Dan Hill and Associates, Inc. Temporary Exemption No. 98-1 to February 1, 2001
- Aug. 29, 2000 Tech, Inc. letter to Dan Hill and Associates, Inc. stating that it is unlikely that its most recent attempt to install an ICC bumper on the Flow boy trailer will meet Standard No. 224 plasticity requirements and be certified.

As you can see, Dan Hill and Associates, Inc. has made every possible effort to comply with Standard No. 224. Although our company requested a written interpretation regarding the applicability of Standard No. 224 to the Flow Boy trailer on November 3, 1997, it was not provided by NHTSA. Since that time, Dan Hill and Associates, Inc. has attempted to protect itself in the event that the requirements do apply to our trailer.

Further, Dan Hill and Associates, Inc. requested information in its Petition for Renewal of Exemption (page 10), on November 10, 1998 regarding the Petition for Rulemaking filed by Thieman Tailgates, Inc. which apparently sought to change the definition of a special purpose vehicle. Although NHTSA acknowledged my request twice, I was never provided with information regarding the outcome of the Petition for Rulemaking and its applicability to Dan Hill and Associates, Inc. Our company was hopeful that the "special purpose vehicle" definition would be broadened to include the Flow Boy trailer. This was apparently not the case.

### **Continued Safety Efforts**

We appreciate NHTSA's willingness to review this matter and see first-hand the difficulty we have faced in attempting to equip the Flow Boy trailer with rear under-ride protection. Also, you will see our recent attempts to further protect the driving public with enhanced conspicuity efforts including the following:

1. High-intensity flashing safety lights;

2. Doubling the legally required amount of conspicuity taping at the rear of the trailer;
3. Safety signage;
4. Red clearance lights that normally emit light in twilight or night-time conditions; and
5. Installation of a rear under-ride protection assembly 28" above the ground and 60" in width.

### Conclusion

With time running out, Dan Hill and Associates, Inc. seeks permanent relief from compliance with Standard No. 224. If Dan Hill and Associates, Inc. is required to comply with under-ride protection systems, production of the Flow Boy trailer will be reduced significantly. It will only be sold for hauling rocks, gravel and some concrete. It will not be used by asphalt contractors. It will have limited appeal. Within a short time, production of the trailer will cease entirely. Jobs will be lost and a major employer in McClain County will be lost. This would mean a significant loss to many people in our state, including shareholders, lenders, employees, families, and other stakeholders. Please grant a permanent exemption to the company that has in good faith attempted to comply with this NHTSA requirement.

Sincerely yours,



Tamara Beam Cain, General Counsel  
Dan Hill and Associates, Inc.

CC: Terry Hill  
David Griffis



U.S. Department  
of Transportation

National Highway  
Traffic Safety  
Administration

400 Seventh Street, S.W.  
Washington, D.C. 20590

JUL 17 1997

Mr. Garry Bowhall  
VP Sales and Engineering  
Red River Mfg., Inc.  
202 8th St. W.  
P.O. Box 732  
West Fargo, ND 58078

Dear Mr. Bowhall:

This responds to your letter asking whether your belted-bottom trailers are "special purpose vehicles" under Federal Motor Vehicle Safety Standard No. 224, Rear Impact Protection. I apologize for the delay in responding. The answer to your question is no.

After January 1998, Standard 224 will require most trailers and semitrailers weighing over 10,000 pounds to be fitted at the rear with an underride guard. Excluded from Standard 224 are "special purpose vehicles." A special purpose vehicle is defined in S4 of the standard as "a trailer or semitrailer having work-performing equipment . . . that, while the vehicle is in transit, resides in or moves through the area that could be occupied by the horizontal member of the rear underride guard . . . ." (Emphasis added.)

Your letter and its enclosed brochures and video explain that you manufacture trailers that discharge their contents by means of a moving belt on the trailer floor that pushes the contents to the rear of the trailer. Your underride guards are currently located 24 inches forward of the vehicle's rear extremity, and you believe that having to locate the guard 12 inches closer to the rear extremity, as will be required by Standard 224, would render your vehicles unusable.

Your vehicle does not meet the definition of a special purpose vehicle. The "special purpose vehicle" exclusion does not apply merely because the vehicle has a "special purpose." The exclusion involves the relationship of work-performing equipment to the guard. The conveyor belt on your vehicles at no time passes through the area where the horizontal member of



AUTO SAFETY FOOTING  
(800) 451-1000  
Washington, D.C. 20590

the underride guard would be located. Moreover, even if it did pass through, it would have to do so while the vehicle is in transit. Because your vehicles do not meet the definition of "special purpose vehicles," they are not excluded from Standard 224.

Under one of our regulations (49 CFR Part 555), vehicle manufacturers may apply for a temporary exemption from the Federal motor vehicle safety standards. Under Sec. 555.6(a), a manufacturer whose yearly production is not more than 10,000 units may ask for an exemption of up to three years on the basis that compliance would cause it substantial economic hardship and that it has attempted in good faith to comply with the standard from which it has asked to be excused. I have enclosed a copy of Part 555 for your information. Please note that it takes three to four months from the date of submittal before a decision can be made on such an application because it has to be submitted for public comment.

If you need further assistance, you may contact Mr. Atelsek of my staff at (202) 366-2992.

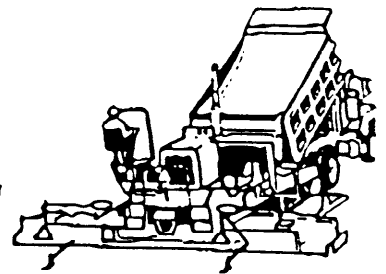
Sincerely,

/s/

John Womack  
Acting Chief Counsel

BOX 1000  
WALPOLE  
NEW HAMPSHIRE 03608  
(603) 445-5555  
FAX: (603) 445-5307  
SALES FAX: (603) 445-2220

# FRANK W. WHITCOMB CONSTRUCTION CORP.



FRANK W. WHITCOMB 1910-197

September 17, 1997

Administrator  
Federal Highway Administration  
Washington, D.C.

Dear Administrator:

I am writing regarding the Highway Administrations denial for an exemption from Rear Underide Protection for Flowboy style trailers. At the present time our company has nineteen units of this type. They are primarily used to transport hot mix asphalt from our plant facilities to our pavers out in the field. We were aware of the pending legislation and anticipated the necessity of our compliance. I especially have been aware of this legislation and have followed it since the original notice posted in Docket #1-11 of October 1967.

At the present time I serve on the Technical Advisory Group of the American Trucking Associations. I also serve on the Rear Underide Taskforce. As you are probably well aware the rear underide question was largely ignored until just the last few years. When the new docket was proposed, with the very stringent dimensions I notified Mr. David Griffis, Vice President of Flowboy Manufacturing in Norman, Oklahoma of the pending legislation. I indicated that we had to develop a rear underide that would satisfy the regulations, and that would also allow us to unload our trailers. We have worked together on this problem and have not been able to develop a system that works. I have had several different types of underide protection devices on our trailers all without success. Most times we were unable to back the trailer into the paving machine, and when we discharged the hot mix asphalt it fell onto the ground in front of the paving machine. On one other occasion our test device became caught in the paver's hopper and when the truck started to pull away it dragged the paver with it! In this particular incident we were very lucky that no one was injured.

Mr. Griffis and I have discussed this situation many many times over the past few years, and I am aware that both he and his company have made a sincere effort at compliance. I am aware that one of his staff even went to Europe to investigate a type of device that might work. This device proved to be inconsistent in its operation and prohibitively expensive. I am aware that our company has spent several thousand dollars attempting to make our vehicles comply, with no avail. We already incur additional



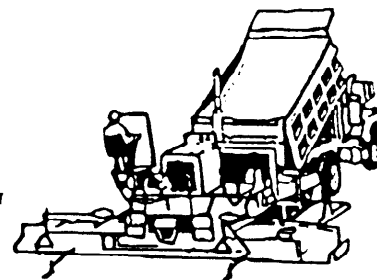
ESTABLISHED 1932

SAND & GRAVEL • CRUSHED STONE • ASPHALT MIXES • ASPHALT PAVING • RECYCLING

ATTACHMENT "E"

BOX 1000  
WALPOLE  
NEW HAMPSHIRE 03608  
(603) 445-5555  
FAX: (603) 445-5307  
SALES FAX: (603) 445-2220

## FRANK W. WHITCOMB CONSTRUCTION CORP.




FRANK W. WHITCOMB 1910-1977

expense maintaining the fronts of our pavers because of the damage they sustain from rear underide at the 22" height.

I would request that you review the application for a permanent exemption from the regulation for this type of trailer. I believe that you will find that there are relatively very few of this style trailer on the highways, and the exemption can be justified by the Impracticability of compliance and safety concerns for the men and women who work around these trailers while they are discharging their cargo.

Sincerely



Thomas J. Parent  
Transportation Director



ESTABLISHED 1932

SAND & GRAVEL • CRUSHED STONE • ASPHALT MIXES • ASPHALT PAVING • RECYCLING

J.C. WATTS, JR.  
4TH DISTRICT, OKLAHOMA

MICHAEL J. HUNTER  
CHIEF OF STAFF

COMMITTEES:

BANKING AND FINANCIAL SERVICES

SUBCOMMITTEE ON CAPITAL MARKETS,  
SECURITIES AND GOVERNMENT  
SPONSORED ENTERPRISES

SUBCOMMITTEE ON DOMESTIC AND  
INTERNATIONAL MONETARY POLICY

NATIONAL SECURITY

VICE CHAIR,

SUBCOMMITTEE ON MILITARY PERSONNEL

SUBCOMMITTEE ON PROCUREMENT

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-3604**

September 24, 1997

OFFICES:

1713 LONGWORTH BUILDING  
WASHINGTON, DC 20516  
(202) 225-6166

2420 SPRINGER DRIVE  
SUITE 120  
NORMAN, OK 73069  
(405) 328-8500

AMERICAN NATIONAL BANK BUILDING  
601 D AVENUE, SUITE 206  
LAWTON, OK 73501  
(405) 357-2131

Mr. David Griffis  
Dan Hill & Associates, Inc.  
Norman, OK 73070  
Fax (405) 329-8588

Dear David:

This letter is written pursuant to our phone conference and recent meeting. I have made initial inquiries to the National Highway Traffic Safety Administration regarding your concern about recent administrative regulation provisions which could adversely impact your business.

I have had brief conversations with NHTSA officials and an initial reaction is that the situation I described should fall within a special purpose vehicle designation. I have been informed that it would be appropriate for you to submit a request for interpretation of this regulation from the Acting General Counsel. In addition, one of the staff engineers indicated that you should copy him on your concerns to address the technical difficulties of compliance.

Please make your request to the following address:

Mr. John Womack, General Counsel

National Highway Traffic Safety Administration

400 Seventh St. SW

Washington, DC 20590

Mr. Sam Daniel, Engineer

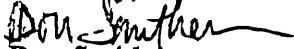
NHTSA

400 Seventh Street SW

Washington, DC 20590

In addition, the regional administrator for Oklahoma is Georgia Charkiris 819 Taylor Street Room 8A38, Fort Worth, TX. 76102. I have had brief discussions with this office on this issue. Again, thank you for contacting Congressman Watts with this issue and I will be happy to make formal inquiry to the above mentioned offices once you have submitted your request for an interpretation of this regulation.

Sincerely,



Don Smitherman

Attorney/Field Rep.

PLEASE REPLY TO:  
☐ WASHINGTON

☐ NORMAN

☐ LAWTON

# WARREN PAVING INC.

TELEPHONE (601) 544-7811  
FAX # (601) 544-2005



CONTRACTORS & ENGINEERS



POST OFFICE BOX 572  
HATTIESBURG, MISSISSIPPI 39403

October 13, 1997



Mr. Ricardo Martinez  
Administrator  
National Highway Traffic Safety Administrator  
Washington, D. C. 20590

Dear Administrator:

I am writing this letter concerning your proposal to require rear underride protection on all horizontal discharge trailers. I recently purchased our first trailer of this type with the intention of adding at least ten additional units in the near future. This requirement would render this type of trailer useless for my business and for all asphalt paving contractors across the United States. I expect there will be quite an outcry when word gets out about your proposal.

With this proposed regulation in mind, I recently attempted to get my 1995 Buick LeSabre to come in contact with my horizontal discharge trailer while parked on a level concrete slab. No part of my car could come into contact with this trailer except for my bumper which touched the rear tires on the trailer.

It is ironic to me that your proposal for rear underride protection is being promoted in the name of safety when, in truth, horizontal discharge trailers are probably some of the safest trailers on the road. For example, just last week we had an incident where one of our truck drivers pulling a frame type end dump trailer failed to lower his body as he pulled away from the paver. This mistake caused him to pull down an entire traffic light system at the busiest intersection in our city. Several years ago, we had an similar accident where a driver caused extensive damage to a bridge while working below on an interstate highway. Obviously, neither accident would have occurred with the use of the horizontal discharge trailer.



ATTACHMENT "C"



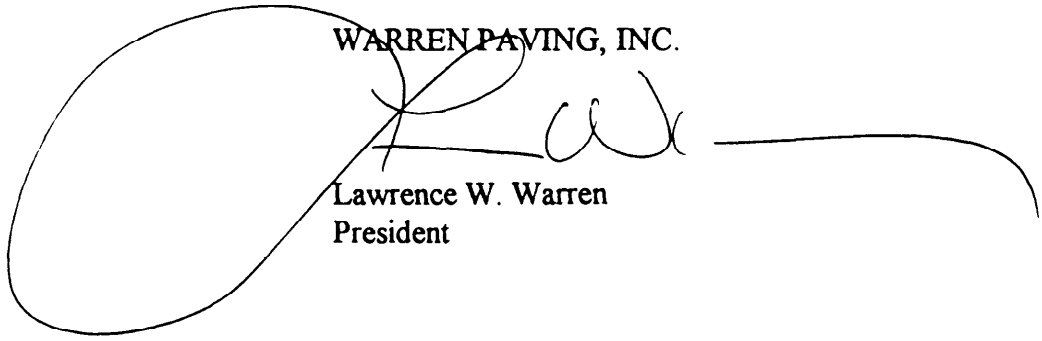
Martinez, Mr. Ricardo

Page 2

I hope that your administration will reconsider this issue and allow our industry to continue to use the horizontal discharge trailer.

Sincerely yours,

WARREN PAVING, INC.



Lawrence W. Warren  
President

Enclosures

cc: Senator Trent Lott  
Senator Thad Cochran  
Congressman Gene Taylor  
Congressman Mike Parker  
Congressman Chip Pickering

# DAN HILL & ASSOCIATES, INC.

dba Flow Boy Mfg.  
dba Total Truck & Trailer  
dba Mabarr

P.O. Box 720660  
Norman, OK 73070-4500

405-329-3765  
FAX 405-329-8588

October 14, 1997

Mr. John Womack, General Counsel  
National Highway Traffic Safety Administration  
400 Seventh Str. S.W.  
Washington, D.C. 20590

**Re: Applicability of Standard 224; Rear  
Impact Guard Protection**

Dear Mr. Womack:

Please find enclosed the original and two (2) copies of a Petition for Exemption requesting a one year temporary exemption in regard to the applicability of Standard 224 to the Flow Boy trailer manufactured by Dan Hill & Associates, Inc. The horizontal discharge Flow Boy trailer is used in the road construction industry to haul hot mix asphalt. Installation of a rear impact guard on the Flow Boy will prevent the trailer from connecting to a paving machine. Accordingly, the trailer will be unusable for its intended purpose and the entire road construction industry will be adversely affected.

I understand that a representative from the office of the Honorable J. C. Watts has contacted your office regarding this issue. We have been advised by his office that we should request a formal interpretation as to the applicability of Standard 224 to the Flow Boy. This company is in the process of preparing a video which will demonstrate the inability of the Flow Boy trailer equipped with a Standard 223 rear impact guard, to connect to a paving machine and discharge hot mix asphalt into the paver hopper. The video, which will be provided to your office in the next few weeks, along with the written material contained in the enclosed information, should be sufficient information to allow the National Highway Transportation Safety Administration ("NHTSA") to issue an interpretation regarding the applicability of Standard 224 to the Flow Boy trailer.

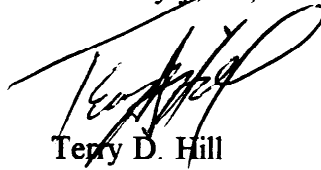
Congressman Watts has indicated that you requested that a copy of the video and written materials be provided to the NHTSA engineer. Accordingly, I am sending a copy of the enclosed Petition for Exemption to Mr. Sam Daniel. I will send him a copy of the video and any additional written materials when they become available.

Pursuant to 49 C.F.R. §555.7(c), I am requesting that a representative of our company be

allowed to meet informally with an appropriate official of the NHTSA to discuss the Petition for Exemption and the action to be taken in response. Please advise as to the time and place of this meeting.

You will be receiving a formal request for interpretation along with additional information from this company as soon as possible. I appreciate your attention to this matter.

Sincerely yours,



Terry D. Hill  
President, Dan Hill & Associates, Inc.

cc: Mr. Sam Daniel, Engineer  
NHTSA  
400 Seventh Street S.W.  
Washington, D.C. 20590

The Honorable J. C. Watts, Jr.  
Congress of the United States  
c/o Don Smitherman, Attorney/Field Rep.  
2420 Springer Drive, Suite 120  
Norman, Oklahoma 73069

COPIES OF LETTER  
SENT

17 OCT 15 14:34

WASHINGTON DC 20590

**BEFORE THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

<b><u>APPLICANT:</u></b>	<b>DAN HILL &amp;</b>	)	
	<b>ASSOCIATES, INC.</b>	)	
		)	<b>CAUSE NO.</b>
<b><u>RELIEF SOUGHT:</u></b>	<b>TEMPORARY ONE YEAR</b>	)	
	<b>EXEMPTION FROM</b>	)	
	<b>COMPLIANCE WITH FEDERAL</b>	)	
	<b>MOTOR VEHICLE SAFETY</b>	)	
	<b>STANDARD NO. 224</b>	)	

**PETITION FOR EXEMPTION**

**DAN HILL & ASSOCIATES, INC.** ("Applicant") files this Petition for Exemption pursuant to 49 C.F.R. §555.5 et seq. on the basis of substantial economic hardship if it is required to timely comply with Federal Motor Vehicle Safety Standard No. 224; Rear Impact Protection, set forth at 49 C.F.R. §571.224 (1996). Applicant manufactures and sells a horizontal discharge trailer ("Flow Boy") that is used in the road construction industry to deliver asphalt and other road building materials to the construction site. The Flow Boy is designed to connect with and latch onto various paving machines ("pavers"). The Flow Boy, with its hydraulically controlled horizontal discharge system, discharges hot mix asphalt at a controlled rate into a paver which overlays the road surface with asphalt material.

Ironically, safety is one of the major advantages of a Flow Boy delivery system, as opposed to a conventional dump truck dumping hot mix asphalt into the paver. Dangerous overhead obstructions, such as utility lines, can be avoided with the Flow Boy delivery system. Additionally, the Flow Boy trailer eliminates the danger of tipping over on elevated steep grades, uneven terrain, and in high wind conditions.

If applicable, Standard 224 would require that the Flow Boy trailers be fitted with a rear impact guard. Installation of the rear impact guard pursuant to Standards 223 and 224 would prevent the Flow Boy from connecting to the paver. Unless the Flow Boy is determined to be a “special purpose vehicle” and exempt from the requirements of Standard 224, Flow Boy trailers would no longer be functional and contractors would be forced to use standard dump body trucks or trailers with their inherent limitations and safety risks.

Furthermore, application of Standard 224 to Flow Boy trailers will not further the purpose of the Standard, because the Flow Boy trailer is not a highway vehicle. In transit highway time for the trailer is minimal. Additionally, the number of Flow Boy type trailers on the highways today are minuscule compared to the number of trailers this Standard was intended to impact. Out of the 202,102 trailers manufactured in 1996, Applicant manufactured only 81 Flow Boy trailers.

Applicant will be requesting an interpretation from the National Highway Traffic Safety Administration (“NHTSA”) regarding the applicability of Standard 224 to Flow Boy trailers. Concurrently, Applicant is continuing to investigate the feasibility of installing a retractable rear impact guard; although all present information indicates that a retractable rear impact guard cannot be installed on a Flow Boy trailer pursuant to Standards 223 and 224 with the Flow Boy trailer retaining its intended capabilities. Applicant presently seeks a one year temporary exemption until the issue of the applicability of Standard 224 to Applicant’s equipment can be resolved. In support of its Petition for Exemption, Applicant submits the following:

1. Applicant, Dan Hill & Associates, Inc., d/b/a Flow Boy Manufacturing, Post Office Box

720660, Norman, Oklahoma 73070, is a corporation incorporated under the laws of the State of Oklahoma.

2. Applicant requests a one year temporary exemption from compliance with Federal Motor Vehicle Safety Standard No. 224; Rear Impact Protection, set forth at 49 C.F.R. §571.224 (1996) which requires installation of rear impact guards on trailers and semitrailers with a gross vehicle weight rating of 4536 kg or more.
3. If applicable, Standard 224 would affect the following equipment manufactured by Applicant:
  - A. ST-1000 Semi-Trailer
  - B. CB-4000 Semi-Trailer (collectively referred to as “equipment”)
4. Installation of the rear impact guard on the Flow Boy equipment will prevent the connection of the equipment to a paver, essentially making the equipment useless for its intended purpose. (See Attachment “A”, letter of Hemkumar Joshi, Product Engineer, Dan Hill & Associates, Inc.) Because the equipment cannot be modified and retain its intended function, the costs of modification referred to in 49 C.F.R. §555.6(a)(1)(ii) and (iii) are not applicable in this situation, and have not been included in this Petition.
5. Applicant has a fiscal year end of October 31. Accordingly, corporate balance sheets and income statements for 1994, 1995, 1996, and projected 1997 are provided along with the proforma balance sheet and income statement for the fiscal year following denial of the petition. (See Attachment “B”, Dan Hill & Associates, Inc., Consolidated Balance Sheet and Income Statement)

6. If NHTSA determines that Standard 224 is applicable to Applicant's equipment and the petition for exemption is denied, the following hardships would result:

- A. Applicant would probably have to cease manufacturing operations for the Flow Boy trailers and, ultimately, approximately sixty percent (60%) of Applicant's work force would be laid off resulting in McClain County losing one of its largest single employers;
- B. Applicant's gross revenues would decrease by six million dollars (\$6,000,000), it would likely lose all available lines of credit, and Applicant would likely be put out of business if it was unable to adequately diversify its manufacturing operations;
- C. Applicant's profitability stands to dramatically increase in the next few years as the direct result of contractors preparing for increased road building as the result of the significant increase in federal and state transportation dollars that are being allocated to road construction, if the exemption is denied Applicant would not experience any sales increase, moreover, Applicant would also lose all existing Flow Boy trailer sales revenue;
- D. The road construction industry would be adversely affected because it would lose a safe alternative to hauling hot mix asphalt in conventional dump trucks (See Attachment "C", letter of Lawrence W. Warren, Warren Paving, Inc., First Vice Chairperson of National Asphalt Paving Association). Accordingly, the likelihood of worker's on the job injuries would increase;
- E. The quality of roads could be adversely affected if conventional dump trucks are contractors' only source of hauling hot mix asphalt because of the following:
  - 1. The sudden surge of materials which can happen during the unloading of conventional dump trucks can result in the accidental discharge of materials and the overloading of the paver hopper;
  - 2. The segregation of aggregate road building material which is a common problem associated with the delivery of hot mix asphalt in conventional dump trucks; and
  - 3. The inability of the conventional dump truck to deliver hot mix asphalt in a workable condition over long distances (conventional dump trucks lack sufficient insulation).

F. Assuming that Applicant is able to find the technology to install a retractable rear impact guard on the Flow Boy trailer that would comply with Standards 223 and 224 and not affect the trailer's capability to connect to a paver, the following would likely occur:

1. The technology and engineering would be so costly that the price per Flow Boy unit would increase enough that contractor's would purchase the cheaper conventional dump truck alternative and not spend the extra dollars required for the Flow Boy equipment which results in a safer workplace and better quality roads;
2. The placement of the retractable rear impact guard would likely catch excess asphalt as it was discharged into the paver hopper, if the workers failed to diligently clean off the excess asphalt after each use, the asphalt would dry on the bumper and could fall off on the highway and be thrown into the windshield of passing motorists resulting in injury to property and life and increased product liability exposure to Applicant; and
3. The increased weight of the retractable rear impact guard would significantly decrease the payload of the Flow Boy.

7. At all times during the rule making process, Applicant has been confident that the Flow Boy trailer would be exempt from compliance with Standard 224 because of its "special purpose vehicle" status. Flow Boy trailers are federal excise tax exempt and have been held not to be highway vehicles (See Attachment "D-1", letter from Harold D. Rogers, Dan Hill & Associates, Inc. tax counsel, and Attachment "D-2", copy of Flow Boy, Inc. v. United States, (10th Cir. 1984) USTC 16, 418 which held that Flow Boy trailers are not highway vehicles). Applicant has, however, taken steps during the past few years to voluntarily comply with Standards 223 and 224 if at all possible. Following are the efforts made by Applicant to track the rule making process and its unsuccessful efforts to



voluntarily comply with Standards 223 and 224:

- A. Applicant was first made aware of the rear impact guard rule making by Mr. Thomas J. Parent, Transportation Director of Frank W. Whitcomb Construction Corp, Walpole, New Hampshire, a large Flow Boy customer. Parent, a member of the American Trucking Association, served on the Rear Underride Task Force. Applicant and Parent, attempting to voluntarily comply with Standards 223 and 224, experimented with the installation of various rear impact guards. None of the rear impact guards which were installed would allow the Flow Boy to latch onto the paver and discharge its payload into the paver hopper pursuant to its design (See Attachment "E", letter of Thomas J. Parent, Transportation Director of Frank W. Whitcomb Construction Corp.).
- B. In July 1994, Applicant sent its Product Specialist to Germany to view the Underride Protection Guards installed by a German customer on Flow Boy trailers. The technology proved inapplicable, because of differences between the German pavers and the American made pavers.
- C. Applicant has contacted several paving machine manufacturers to discuss the possibility of their redesigning their pavers to accommodate the Flow Boy trailer. Applicant's requests have been denied.
- E. Applicant, noting the similarities between the rear-unload conveyors on trailers used in the potato industry and the rear discharge conveyor of the Flow Boy, continued to believe that Flow Boy trailers were exempt from compliance with Standard 224. Based on the holding set forth in Flow Boy, Inc. v. United States, Applicant relied on the NHTSA determination that a specific mention of the potato trailer in the standards was unnecessary because of its alleged "special purpose vehicle" status. See 61 Fed. Reg. No. 16, 2004, 2022 (1996).
- F. After repeated unsuccessful efforts to voluntarily comply with the subject standards, Applicant contacted Paul Atelsek of the NHTSA earlier this year regarding an interpretation of the applicability of Standards 223 and 224 to Applicant's products. Atelsek suggested that Applicant not make a formal request for an interpretation at that time, because he had a pending request from a rear discharge trailer manufacturer in North Dakota. Atelsek, stating that the interpretation requested by Red River Manufacturing had been delayed due to the considerable time being spent by NHTSA on the air bag issue, agreed to send Applicant's counsel a copy of the Red River Manufacturing interpretation request once it was completed. On July 21, 1997 Applicant's counsel received a copy of the letter from the NHTSA denying exempt status to Red River (See Attachment "F", letter from NHTSA).

- G. Since July 21, 1997 Applicant has made repeated efforts to design, engineer and install a Standard 224 rear impact guard. The trailer, with the rear impact guard installed pursuant to Standards 223 and 224, simply will not connect with and latch onto a paver.
8. Applicant has considered the following alternative means of compliance:
- A. Retractable Rear Impact Guard: Applicant has contacted a British manufacturer of a retractable rear impact guard. Information regarding engineering received to date, does not look encouraging. Applicant has requested additional engineering information, prices, and availability information.
  - B. Removable Rear Impact Guard: The guard, manufactured pursuant to Standard 223 specifications, would be very heavy to remove and install. Also, the likelihood of a worker failing to install the bumper prior to transit would be too great. The exposure to liability associated with workers' potential physical injuries removing and installing a removable bumper, along with the exposure related to a worker inadvertently leaving the rear impact guard off the moving vehicle were too great. This potential alternative has been eliminated.
  - C. Redesign Paving Machines to Accommodate Rear Impact Guard: All requests have been denied by paving companies. This potential alternative has been eliminated.
9. Applicant will take the following steps to achieve compliance with Standards 224:
- A. Request an interpretation from the NHTSA regarding the applicability of Standard 224 to the Flow Boy trailers. This request will be made prior to November 1, 1997.
  - B. Continue to explore the feasibility of installing a retractable rear impact guard either manufactured by another entity or by Applicant that would allow connection with a paver. The feasibility of this alternative will be determined within one year .
10. Applicant has produced 107 units in the twelve (12) month period prior to filing this Petition for Exemption.
11. The purpose of Standard 224 "is to reduce the number of deaths and serious injuries

occurring when light duty vehicles impact the rear of trailers...” Applicant contends that application of this standard to the Flow Boy trailer will not further the purpose of the Standard and that a permanent, as well as temporary, exemption would be in the public interest because of the following:

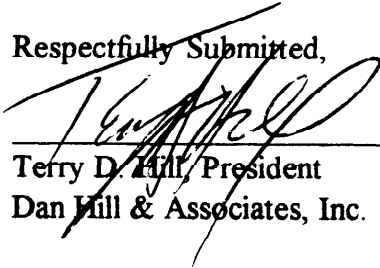
- A. There are so few trailers of this type on the highways today. Because of the proximity of hot mix plants to road construction sites the trailers spend very limited amounts of time on the highways. Furthermore, of the 202,102 trailers completed in 1996, Applicant manufactured only 81 of these. Accordingly, the likelihood of this type of trailer being involved in a rear-end collision on the highway is extremely minimal ( See Attachment “G-1”, Chart of Annual Trailer Production by Type, and Attachment “G-2”, Pie Chart showing Horizontal Market Share).
  - B. The purpose of Standard 224 is to reduce the number of deaths and serious injuries occurring when light duty vehicles impact the rear of semi-trailers. Application of this Standard to Flow Boys does not significantly further the purpose of this rule, because presently the ICC bumper is placed 24” from the rear of the trailer and the tires are only 34” from the rear of the trailer. Accordingly, the tires act as a buffer and reduce the likelihood of impact with the semi-trailer and the vehicle’s windshield or interior of the vehicle significantly (See Attachment “H-1”, Schematic Drawing of Existing ICC Bumper Guard, and Attachment “H-2”, Schematic Drawing of Rear End W/O ICC Bumper).
12. Pursuant to 49 C.F.R. §555.7(c), Applicant requests an informal appearance before an appropriate official of the NHTSA to discuss the Petition for Exemption and the action to be taken in response to the Petition.

**Applicant** respectfully requests that the NHTSA grant a one-year exemption for compliance with Standard 224 so that it can make a request for an interpretation of the applicability of the standard to Applicant’s products and so that it can explore the feasibility of manufacturing and installing a retractable rear impact guard that will allow the Flow Boy trailer to

connect to a paver pursuant to its intended use and design.

Dated this 14th day of October, 1997.

Respectfully Submitted,



---

Terry D. Hill, President  
Dan Hill & Associates, Inc.

## **INDEX OF ATTACHMENTS**

<b>ATTACHMENT "A":</b>	<b>Letter of Hemkumar Joshi, Product Engineer, Dan Hill &amp; Associates, Inc.</b>
<b>ATTACHMENT "B"</b>	<b>Dan Hill &amp; Associates, Inc., Consolidated Balance Sheet and Income Statement</b>
<b>ATTACHMENT "C"</b>	<b>Letter of Lawrence W. Warren, Warren Paving, Inc., First Vice Chairperson National Asphalt Paving Association</b>
<b>ATTACHMENT "D-1"</b>	<b>Letter from Harold D. Rogers, Dan Hill &amp; Associates, Inc. tax counsel</b>
<b>ATTACHMENT "D-2"</b>	<b><u>Flow Boy, Inc. v. United States</u>, (10th Cir. 1984) USTC 16, 418 (which held that Flow Boy trailers are not highway vehicles)</b>
<b>ATTACHMENT "E"</b>	<b>Letter of Thomas J. Parent, Transportation Director of Frank W. Whitcomb Construction Corp.</b>
<b>ATTACHMENT "F"</b>	<b>Letter from National Highway Traffic Safety Administration</b>
<b>ATTACHMENT "G-1"</b>	<b>Chart of Annual Trailer Production by Type</b>
<b>ATTACHMENT "G-2"</b>	<b>Pie Chart Demonstrating Horizontal Discharge Market Share</b>
<b>ATTACHMENT "H-1"</b>	<b>Schematic Drawing of Existing ICC Bumper Guard</b>
<b>ATTACHMENT "H-2"</b>	<b>Schematic Drawing of Rear End W/O ICC Bumper</b>

# DAN HILL & ASSOCIATES, INC.

dba Flow Boy Mfg.  
dba Total Truck & Trailer  
dba Mabar

P.O. Box 720660  
Norman, OK 73070-4500

405-329-3765  
FAX 405-329-8588

## Inter-Office Memo

**To:** Terry Hill and David Griffis  
**From:** Hemkumar Joshi, Engineer  
**Subject:** Under Ride Protection Guard  
**Date:** 09/01/97

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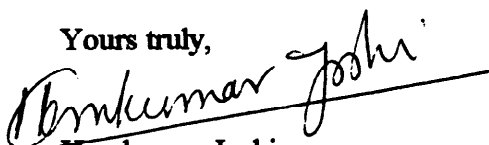
This memo addresses the project assigned to the engineering department on the "Rear Impact Guard". You are well aware of the substantial time that I have spent in the development, research, and attempts to formulate a destructive testing method for the above. Looking at the salient features of the equipment and its one and only one application (viz. it being in conjunction with a paving machine), for the present or the near future, I conclude that the application of the new Federal Motor Vehicle Safety Standard No. 223 and No. 224 would disable the usage of the equipment entirely from the road building industry with a rigid guard.

In order to comply to Standard No. 223 and No. 224, an entirely unique mechanism which would be retractable in nature comes under consideration. I have on numerous occasions discussed the feasibility of a retractable rear impact guard with our product specialist, Mr. Chip Herring and Mr. Bob Schumate (an expert in hydraulics from Motion Industries). have indicated to me that intense research would be needed in terms of defining the appropriate retractable mechanism, if one exists, and selecting the necessary hydraulic components for this purpose. In conclusion, installation of a rigid guard will render the equipment useless. In regard to the retractable guard, I would, therefore, need a greater amount of time to determine its feasibility as well as to build in a higher factor of safety and reliability if any.

Looking at the gravity of this situation, I sincerely request of you to give me more time to tackle this intricate problem.

Thank you.

Yours truly,

  
Hemkumar Joshi  
Engineer

**ATTACHMENT "A"**

**CURRENT ASSETS**

CASH	-112,143	22,000	69,187	9,316	204,104
CUSTOMER DEPOSITS	0	0	-6,795	0	-158,220
ACCOUNTS RECEIVABLE	483,000	994,883	1,188,813	1,172,540	1,312,628
NOTES RECEIVABLE	19,000	79,946	159,946	209,946	4,850
EMPLOYEE RECEIVABLE	1,500	16,565	1,152	1,022	492
PREPAID INSURANCE ACCTS.	1,111	1,246	1,464	-7,494	-1,320
PREPAID INCOME TAX	0	0	11,994	17,880	0
INVENTORY-NORMAN	703,090	1,607,200	1,836,132	1,293,353	1,152,752
INVENTORY-FAIRVIEW	1,201,750	1,337,118	1,445,255	968,459	755,795
DEPOSITS	4,409	4,409	4,409	4,409	3,809

<b>TOTAL CURRENT ASSETS</b>	<u>2,301,717</u>	<u>4,063,367</u>	<u>4,711,557</u>	<u>3,669,432</u>	<u>3,274,889</u>
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**FIXED ASSETS**

LAND	0	0	213,360	213,360	213,360
AUTOMOBILES	228,113	247,767	229,581	270,708	223,435
OFFICE FURN & FIXTURES	151,955	151,955	148,634	143,187	146,610
MACHINERY & EQUIPMENT	708,126	708,126	683,594	666,372	674,964
JIGS & FIXTURES	91,553	91,553	91,554	48,395	48,395
BUILDINGS	0	0	1,205,568	1,165,474	1,081,874
LEASE HOLD IMPROVEMENTS	0	32,462			
ACCUM. DEPRECIATION	-1,026,287	-882,715	-1,510,860	-1,406,279	-1,316,669

<b>TOTAL FIXED ASSETS</b>	<u>153,460</u>	<u>349,148</u>	<u>1,061,431</u>	<u>1,101,217</u>	<u>1,071,971</u>
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<b>TOTAL ASSETS</b>	<u>2,455,177</u>	<u>4,412,515</u>	<u>5,772,988</u>	<u>4,770,649</u>	<u>4,346,860</u>
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**CURRENT LIABILITIES**

ACCOUNTS PAYABLE	385,000	1,071,435	1,170,224	748,370	1,176,880
NOTES PAYABLE-BANKS	46,331	40,398	105,391	84,000	171,250
NOTES PAYABLE-CREDIT LINE	505,618	1,043,098	1,699,585	1,106,577	848,632
NOTES PAYABLE-INSTALLMENTS	31,953	23,901	46,643	40,229	54,920
ACCRUED ACCOUNTS	72,000	244,368	208,399	170,148	334,744
DEFERRED TAXES	39,917	39,917	40,985	39,700	34,737

<b>TOTAL CURRENT LIABILITIES</b>	<u>1,080,819</u>	<u>2,463,117</u>	<u>3,271,227</u>	<u>2,189,025</u>	<u>2,621,163</u>
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LONG TERM NOTES PAYABLE	452,112	525,007	1,206,287	1,356,735	609,653
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<b>TOTAL LIABILITIES</b>	<u>1,532,931</u>	<u>2,988,124</u>	<u>4,477,514</u>	<u>3,545,761</u>	<u>3,230,816</u>
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**STOCKHOLDERS' EQUITY**

COMMON STOCK	270	270	270	270	270
ADDITIONAL PAID IN CAPITAL	17,450	17,450	17,450	17,450	17,450
RETAINED EARNINGS	1,406,671	1,277,754	1,207,168	1,098,324	940,922
NET PROFIT/LOSS	-502,145	128,917	70,586	108,844	157,402

<b>TOTAL STOCKHOLDERS' EQUITY</b>	<u>922,246</u>	<u>1,424,391</u>	<u>1,295,474</u>	<u>1,224,888</u>	<u>1,116,044</u>
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<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u>2,455,177</u>	<u>4,412,515</u>	<u>5,772,988</u>	<u>4,770,649</u>	<u>4,346,860</u>
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**DAN HILL & ASSOC., INC.**  
**PROFIT & LOSS STATEMENT**

**PROFORMA**  
**Oct-98**

**PROJECTED**  
**Oct-97**

**Oct-96**

**Oct-95**

**Oct-94**

**YEAR-T-DATE RATIO/  
 AMOUNT SALES**

**YEAR-T-DATE RATIO/  
 AMOUNT SALES**

**YEAR-T-DATE RATIO/  
 AMOUNT SALES**

**YEAR-T-DATE RATIO  
 AMOUNT /SALES**

**YEAR-T-DATE RATIO  
 AMOUNT /SALES**

<b>SALES</b>										
SALES-FLOW BOY UNITS *	625,000	6.47%	4,803,215	28.88%	3,490,115	23.82%	3,962,529	28.13%	4,103,556	31.77%
SALES-FLOW BOY PARTS *	258,000	2.67%	717,793	4.32%	698,576	4.77%	800,140	5.68%	809,799	6.27%
SALES-FLOW BOY HALF ROUNDS	500,000	5.17%	488,049	2.93%	774,252	5.28%	0	0.00%	0	0.00%
SALES-FLOW BOY PUP TRAILERS	850,000	8.79%	871,644	5.24%	697,396	4.76%	0	0.00%	0	0.00%
SALES-FLOW BOY INTERNATIONAL *	0	0.00%	1,216,272	7.31%	279,703	1.91%	691,084	4.91%	576,840	4.47%
SALES-TOTAL TRUCK	2,185,000	22.61%	2,746,484	16.52%	4,586,190	31.30%	5,531,975	39.28%	4,527,088	35.05%
SALES-MABAR EQUIPMENT	5,225,000	54.06%	5,741,509	34.53%	4,114,728	28.08%	3,223,039	22.88%	3,104,063	24.03%
CASH DISCOUNTS	-65,000	-0.67%	-81,536	-0.49%	-101,979	-0.70%	-229,737	-1.63%	-240,147	-1.86%
FREIGHT OUT	88,000	0.91%	126,000	0.76%	115,493	0.79%	105,292	0.75%	35,183	0.27%
<b>GROSS SALES</b>	<u>9,666,000</u>	100.00%	<u>16,629,430</u>	100.00%	<u>14,654,474</u>	100.00%	<u>14,084,322</u>	100.00%	<u>12,916,382</u>	100.00%
<b>COST OF GOODS SOLD</b>	<u>8,699,400</u>	90.00%	<u>14,467,604</u>	87.00%	<u>12,791,732</u>	87.29%	<u>12,298,073</u>	87.32%	<u>11,085,529</u>	85.83%
<b>GROSS PROFIT</b>	<u>966,600</u>	10.00%	<u>2,161,826</u>	13.00%	<u>1,862,742</u>	12.71%	<u>1,786,249</u>	12.68%	<u>1,830,853</u>	14.17%
<b>GENERAL &amp; ADMINISTRATIVE EXPENSE</b>	652,455	6.75%	1,005,191	6.04%	985,745	6.73%	792,635	5.63%	831,443	6.44%
<b>SALES EXPENSES</b>	828,290	8.57%	1,094,710	6.58%	892,137	6.09%	874,164	6.21%	823,409	6.37%
<b>NET INCOME FROM OPERATIONS</b>	<u>-514,145</u>	-5.32%	<u>61,925</u>	0.37%	<u>-15,140</u>	-0.10%	<u>119,450</u>	0.85%	<u>176,001</u>	1.36%
<b>MISC INCOME</b>	12,000	0.12%	99,145	0.60%	98,171	0.67%	19,299	0.14%	32,330	0.25%
<b>GAIN/LOSS ON SALE OF ASSETS</b>	<u>0</u>	0.00%	<u>22,810</u>	0.14%	<u>18,193</u>	0.12%	<u>8,324</u>	0.06%	<u>6,005</u>	0.05%
<b>TOTAL OTHER INCOME</b>	<u>12,000</u>	0.12%	<u>121,955</u>	0.73%	<u>116,364</u>	0.79%	<u>27,623</u>	0.20%	<u>38,335</u>	0.30%
<b>NET INCOME BEFORE TAXES</b>	-502,145	-5.19%	183,880	1.11%	101,224	0.69%	147,073	1.04%	214,336	1.66%
<b>TAX ENTRIES</b>		0.00%	-54,963	-0.33%	-30,638	-0.21%	-38,229	-0.27%	-56,934	-0.44%
<b>NET INCOME AFTER TAXES</b>	<u>-502,145</u>	-5.19%	<u>128,917</u>	0.78%	<u>70,586</u>	0.48%	<u>108,844</u>	0.77%	<u>157,402</u>	1.22%

**FOOTNOTES:**

- 1 The fiscal year end is October 31
- 2 Projected Oct 97- Actual numbers are used through Sept and 1 month is projected
- 3 Proforma Oct 98 - Numbers are based on retaining all 101 employees..of which  
 40 work in the Flow Boy plant.

- 4 \*These three areas of sales will be effected (Flow Boy Trailers, Parts, International)  
 9.14% Oct 98 - Percentage of sales represented  
 40.51% Oct 97  
 30.50% Oct 96  
 38.72% Oct 95  
 42.51% Oct 94



# WARREN PAVING INC.

.....  
TELEPHONE (601) 544-7811  
FAX # (601) 544-2005



CONTRACTORS & ENGINEERS  
.....



POST OFFICE BOX 572  
HATTIESBURG, MISSISSIPPI 39403

October 13, 1997



Mr. Ricardo Martinez  
Administrator  
National Highway Traffic Safety Administrator  
Washington, D. C. 20590

Dear Administrator:

I am writing this letter concerning your proposal to require rear underride protection on all horizontal discharge trailers. I recently purchased our first trailer of this type with the intention of adding at least ten additional units in the near future. This requirement would render this type of trailer useless for my business and for all asphalt paving contractors across the United States. I expect there will be quite an outcry when word gets out about your proposal.

With this proposed regulation in mind, I recently attempted to get my 1995 Buick LeSabre to come in contact with my horizontal discharge trailer while parked on a level concrete slab. No part of my car could come into contact with this trailer except for my bumper which touched the rear tires on the trailer.

It is ironic to me that your proposal for rear underride protection is being promoted in the name of safety when, in truth, horizontal discharge trailers are probably some of the safest trailers on the road. For example, just last week we had an incident where one of our truck drivers pulling a frame type end dump trailer failed to lower his body as he pulled away from the paver. This mistake caused him to pull down an entire traffic light system at the busiest intersection in our city. Several years ago, we had a similar accident where a driver caused extensive damage to a bridge while working below on an interstate highway. Obviously, neither accident would have occurred with the use of the horizontal discharge trailer.



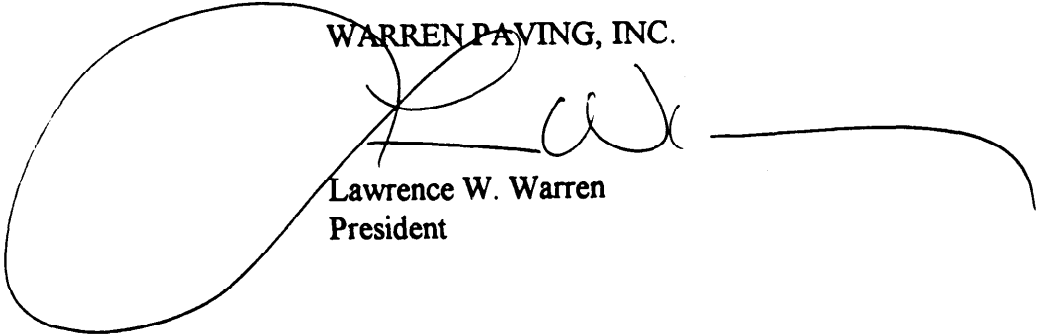
ATTACHMENT "C"

Martinez, Mr. Ricardo  
Page 2

I hope that your administration will reconsider this issue and allow our industry to continue to use the horizontal discharge trailer.

Sincerely yours,

WARREN PAVING, INC.



Lawrence W. Warren  
President

Enclosures

cc: Senator Trent Lott  
Senator Thad Cochran  
Congressman Gene Taylor  
Congressman Mike Parker  
Congressman Chip Pickering

LAW OFFICE  
**HAROLD D. ROGERS**  
A Professional Corporation

September 19, 1997

Administrator  
National Highway Traffic  
Safety Administrator  
Washington, D.C. 20590

Dear Sir:

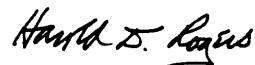
This letter is written with regard to the application of Dan Hill & Associates, Inc. for a temporary exemption from Federal Motor Vehicle Standards for the Flow Boy ST-1000 and CB-4000 semi-trailer units built by Dan Hill & Associates, Inc.

The Flow Boy ST-1000 and CB-4000 units are exempt from the federal excise tax based upon rulings by the courts and the IRS that said units are not highway vehicles since each trailer is substantially limited or impaired for use in transporting loads over the public highways. The limitation and impairment result from the weight and cost of the units.

The ruling relating to the Flow Boy ST-1000 was made by the Tenth Circuit Court of Appeals in Flow Boy, Inc. v. United States, (10th Cir. 1984) 1984-1 USTC 16,418, a copy of which is attached and marked Exhibit "A". The ruling as to the CB-4000 was made by the District Director of Internal Revenue, Oklahoma City, Oklahoma by written report dated May 20, 1996, a copy of which is attached and marked Exhibit "B".

Thanking you, I am,

Very truly yours,



Harold D. Rogers

HDR/rh

cc: Dan Hill & Associates, Inc.

ATTACHMENT **"A"**

[¶ 16,418] Flow Boy, Inc., Plaintiff-Appellee v. United States of America, Defendant-Appellant. Tradewinds Industries, Inc., Plaintiff-Appellee v. United States of America, Defendant-Appellant.

U. S. Court of Appeals, 10th Circuit, Nos. 82-1823, 82-1828, 82-1965, 82-1966, 1/20/84.

[Code Sec. 4061(a)(1), repealed by P. L. 97-424, effective April 1, 1983]

Claim for refund: Motor vehicle tax: Semitrailers: Off-highway use.—An appeals court has upheld the finding of a jury that the use of a semitrailer to transport asphalt over the public highway was "substantially limited" or "substantially impaired" by reason of its special design and has affirmed the trial court's refund of excise taxes. (Two other findings by the jury were not challenged by the government on appeal.) However, the appeals court ruled that, because the case here was decided under Regulations that were significantly different from those in effect in an earlier case involving the plaintiff-appellee, the government was justified in litigating the case and the award of attorney's fees made under the Equal Access to Justice Act was reversed. The case is remanded. Back reference: ¶ 1017.48.

Before SETH, Chief Judge, HOLLOWAY and McKAY, Circuit Judges.

#### Order and Judgment

Tradewind Industries, Inc. manufactured Flow Boy semitrailers until October 15, 1977 when it sold the business to Flow Boy, Inc. The two companies brought actions for the refund of a total of \$164,234.48 in federal excise taxes paid on the semitrailers. The jury determined facts by way of special interrogatories that necessarily led to the conclusion that the semitrailers were not subject under the regulations to the federal excise tax imposed on certain vehicles. The trial court entered judgment for the plaintiffs in the amount claimed and awarded the plaintiffs \$36,507.50 in attorney's fees.

The Flow Boy semitrailer is similar to a large dump truck except that its cargo, typically hot-mix asphalt, is discharged horizontally by means of a conveyor belt rather than being raised and discharged by gravity. The interior walls of the Flow Boy are slanted towards the middle forming a hopper. At the base of the hopper there is a conveyor belt which carries the asphalt to a chute through which it is discharged. The claimed advantages to the Flow Boy are that it is not susceptible to tipping over while unloading, it maintains a uniform flow of asphalt when unloading, it is unaffected by overhead obstructions, is of very large capacity, and is specially designed for off-road use.

The Flow Boy can legally travel over the highway at normal highway speeds. It has brakes and lights for highway use and meets highway standards for length, width, and height. The maximum load that it can legally transport over the highway is generally twenty-six tons. Its off-road capacity is thirty-five tons. The Flow Boy is sub-

stantially more expensive than traditional dump trucks or dump semis.

Three issues were submitted to the jury by way of special interrogatories: (1) whether the Flow Boy was specially designed for the primary function of transporting a particular type of load other than over the public highways in connection with a construction or similar operation; (2) whether, by reason of such special design, the use of the Flow Boy to transport the load over the highways was substantially limited or substantially impaired; and (3) whether the plaintiffs had "passed through" the excise tax in their sales price. The jury answered affirmatively to the first two questions and in the negative to the last question. The trial court concluded that the plaintiffs were entitled to a refund of the excise taxes paid on the Flow Boys.

The Government's motions for a directed verdict and for judgment n. o. v. were denied. The trial court also assessed attorney's fees against the Government, finding that the litigation of this case was not "substantially justified" within the meaning of the Equal Access to Justice Act, 28 U. S. C. § 2412(d).

On appeal the Government challenges only the second finding of the jury—that the use of the Flow Boy to transport asphalt over the highway was "substantially limited" or "substantially impaired." These terms are the terms used in the regulations which if found to exist cause the vehicle to be exempt from the excise tax. Disputes over "impairment" of the vehicle are issues of fact for the jury to resolve with the corresponding standard for review. *Western Co. of North America v. United States* [83-2 USTC ¶ 16,405], 699 F. 2d 264 (5th Cir.).

Federal Excise Tax Reports

ATTACHMENT "D-2" EXHIBIT A

¶ 16,418

The evidence shows that the Flow Boy could not legally travel over the highways if it was carrying a load to its capacity. The designer testified that if the Flow Boy could not carry a full load then it would not be operated efficiently. He stated that it had to be operated at its maximum efficiency in order for buyers to profitably use it, and thus it could not be so operated if it were only loaded to the legal highway weight limits. The jury was entitled to credit that testimony and to conclude that the design was such that its over the highway use was substantially limited or substantially impaired. The trial court did not err in denying the Government's motions for a directed verdict or for judgment n. o. v.

The Government also contends that the trial court erred in imposing attorney's fees. Under the Equal Access to Justice Act, 28 U. S. C. § 2412, attorney's fees may be awarded to a prevailing party unless the Government's position was "substantially justified." The test of whether the Government's position is substantially justified is essentially one of reasonableness. *Knights of the Ku Klux*

*Klan Realm of Louisiana v. East Baton Rouge Parish School Bd.*, 679 F. 2d 64 (5th Cir.). The trial court was of the view that the Government's position was unreasonable because the Government had previously challenged the tax status of the Flow Boy in an earlier case under the previous treasury regulations. See *J. H. Holland Co. v. United States* [77-2 USTC ¶ 16,276], 41 A. F. T. R. 2d 1560 (W. D. Okla.). However, in the case before us the pertinent regulations had been significantly changed and their validity had been upheld by at least one court. *Western Co. of North America v. United States* [83-2 USTC ¶ 16,405], 699 F. 2d 264 (5th Cir.). Therefore, the Government was justified in litigating this case. See *Commissioner v. Sunnen* [48-1 USTC ¶ 9230], 333 U. S. 591. We must therefore reverse the trial court's award of attorney's fees.

It is the judgment of this court that the trial court's refund of the excise taxes paid is affirmed, the award of attorney's fees is reversed, and the case is remanded.

IT IS SO ORDERED.

INTERNAL REVENUE SERVICE

Department of the Treasury

District Director

Harold D. Rogers, POA  
Hamilton Building  
900 Eighth Street, Suite 725  
Wichita Falls, Texas 76301

Person to Contact: S. Munholland

Telephone Number: (405) 297-4858

Date: May 20, 1996

Dear Mr. Rogers,

In regard to the audit of Dan Hill & Associates, Inc.'s Federal excise tax claims for the periods ended March 31, 1992, and June 30, 1992, I have enclosed Form 5385 - Excise Tax Examination Changes, Form 2504 - Agreement to Acceptance of Overassessment, Form 3363 - Acceptance of Proposed Disallowance of Claim for Refund or Credit, and Form 2297 - Waiver of Statutory Notification of Claim Disallowance, for your consideration. If you agree with my findings, please sign, title, and date the Form 2504, Form 3363, and Form 2297, and return them to me as soon as possible. A return envelope is provided for your consideration.

In regard to Dan Hill & Associates, Inc.'s Federal excise tax claims for the last two periods of 1992, 1993, 1994, and the first quarter of 1995, no audit will be conducted. The claims will be surveyed and allowed in full.

If you have any questions, please feel free to call me at (405) 297-4858. I appreciate your cooperation in this matter.

Sincerely,

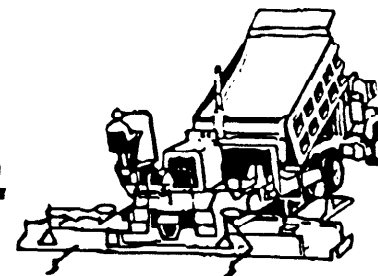


Steve Munholland  
Revenue Agent

**EXHIBIT B**

BOX 1000  
WALPOLE  
NEW HAMPSHIRE 03608  
(603) 445-5555  
FAX: (603) 445-5307  
SALES FAX: (603) 445-2220

# FRANK W. WHITCOMB CONSTRUCTION CORP.



FRANK W. WHITCOMB 1910-1977

September 17, 1997

Administrator  
Federal Highway Administration  
Washington, D.C.

Dear Administrator:

I am writing regarding the Highway Administrations denial for an exemption from Rear Underide Protection for Flowboy style trailers. At the present time our company has nineteen units of this type. They are primarily used to transport hot mix asphalt from our plant facilities to our pavers out in the field. We were aware of the pending legislation and anticipated the necessity of our compliance. I especially have been aware of this legislation and have followed it since the original notice posted in Docket #1-11 of October 1967.

At the present time I serve on the Technical Advisory Group of the American Trucking Associations. I also serve on the Rear Underide Taskforce. As you are probably well aware the rear underide question was largely ignored until just the last few years. When the new docket was proposed, with the very stringent dimensions I notified Mr. David Griffis, Vice President of Flowboy Manufacturing in Norman, Oklahoma of the pending legislation. I indicated that we had to develop a rear underide that would satisfy the regulations, and that would also allow us to unload our trailers. We have worked together on this problem and have not been able to develop a system that works. I have had several different types of underide protection devices on our trailers all without success. Most times we were unable to back the trailer into the paving machine, and when we discharged the hot mix asphalt it fell onto the ground in front of the paving machine. On one other occasion our test device became caught in the paver's hopper and when the truck started to pull away it dragged the paver with it! In this particular incident we were very lucky that no one was injured.

Mr. Griffis and I have discussed this situation many many times over the past few years, and I am aware that both he and his company have made a sincere effort at compliance. I am aware that one of his staff even went to Europe to investigate a type of device that might work. This device proved to be inconsistent in its operation and prohibitively expensive. I am aware that our company has spent several thousand dollars attempting to make our vehicles comply, with no avail. We already incur additional



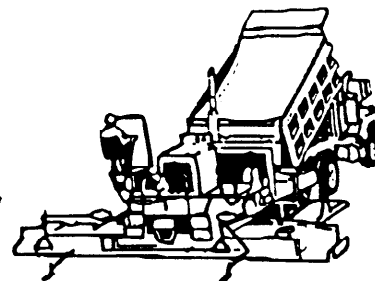
ESTABLISHED 1932

SAND & GRAVEL • CRUSHED STONE • ASPHALT MIXES • ASPHALT PAVING • RECYCLING

ATTACHMENT "E"

BOX 1000  
WALPOLE  
NEW HAMPSHIRE 03608  
(603) 445-5555  
FAX: (603) 445-5307  
SALES FAX: (603) 445-2220

## **FRANK W. WHITCOMB CONSTRUCTION CORP.**



FRANK W. WHITCOMB 1910-1977

expense maintaining the fronts of our pavers because of the damage they sustain from rear underide at the 22" height.

I would request that you review the application for a permanent exemption from the regulation for this type of trailer. I believe that you will find that there are relatively very few of this style trailer on the highways, and the exemption can be justified by the impracticality of compliance and safety concerns for the men and women who work around these trailers while they are discharging their cargo.

Sincerely

Thomas J. Parent  
Transportation Director



ESTABLISHED 1932

SAND & GRAVEL • CRUSHED STONE • ASPHALT MIXES • ASPHALT PAVING • RECYCLING





U.S. Department  
of Transportation

**National Highway  
Traffic Safety  
Administration**

400 Seventh Street, S.W.  
Washington, D.C. 20590

JUL 17 1997

Mr. Garry Bowhall  
VP Sales and Engineering  
Red River Mfg., Inc.  
202 8th St. W.  
P.O. Box 732  
West Fargo, ND 58078

Dear Mr. Bowhall:

This responds to your letter asking whether your belted-bottom trailers are "special purpose vehicles" under Federal Motor Vehicle Safety Standard No. 224, Rear Impact Protection. I apologize for the delay in responding. The answer to your question is no.

After January 1998, Standard 224 will require most trailers and semitrailers weighing over 10,000 pounds to be fitted at the rear with an underride guard. Excluded from Standard 224 are "special purpose vehicles." A special purpose vehicle is defined in S4 of the standard as "a trailer or semitrailer having work-performing equipment . . . that, while the vehicle is in transit, resides in or moves through the area that could be occupied by the horizontal member of the rear underride guard . . . ." (Emphasis added.)

Your letter and its enclosed brochures and video explain that you manufacture trailers that discharge their contents by means of a moving belt on the trailer floor that pushes the contents to the rear of the trailer. Your underride guards are currently located 24 inches forward of the vehicle's rear extremity, and you believe that having to locate the guard 12 inches closer to the rear extremity, as will be required by Standard 224, would render your vehicles unusable.

Your vehicle does not meet the definition of a special purpose vehicle. The "special purpose vehicle" exclusion does not apply merely because the vehicle has a "special purpose." The exclusion involves the relationship of work-performing equipment to the guard. The conveyor belt on your vehicles at no time passes through the area where the horizontal member of

ATTACHMENT E



AUTO SAFETY HOTLINE  
(800) 424-9393  
Wash. D.C. Area (202) 366-0123

the underride guard would be located. Moreover, even if it did pass through, it would have to do so while the vehicle is in transit. Because your vehicles do not meet the definition of "special purpose vehicles," they are not excluded from Standard 224.

Under one of our regulations (49 CFR Part 555), vehicle manufacturers may apply for a temporary exemption from the Federal motor vehicle safety standards. Under Sec. 555.6(a), a manufacturer whose yearly production is not more than 10,000 units may ask for an exemption of up to three years on the basis that compliance would cause it substantial economic hardship and that it has attempted in good faith to comply with the standard from which it has asked to be excused. I have enclosed a copy of Part 555 for your information. Please note that it takes three to four months from the date of submittal before a decision can be made on such an application because it has to be submitted for public comment.

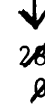
If you need further assistance, you may contact Mr. Atelsek of my staff at (202) 366-2992.

Sincerely,

/s/

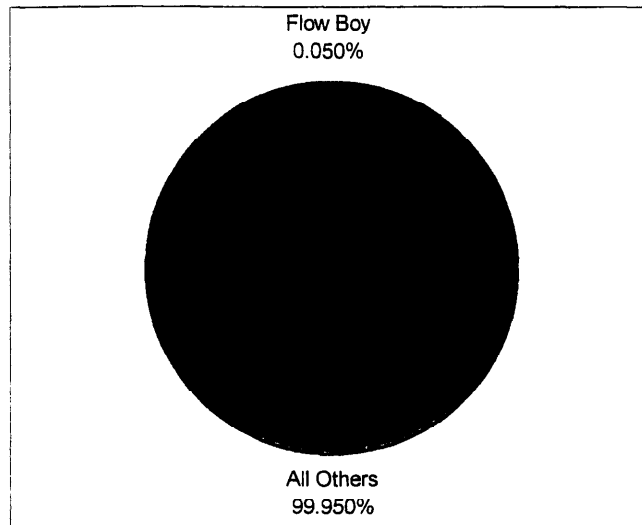
John Womack  
Acting Chief Counsel

	1990	1991	1992	1993	1994	1995	1996	97 YTD	98YTD	
Complete trailers	149,117	122,350	165,268	185,741	234,287	279,144	202,102	125,516		
Total vans	103,894	84,626	127,205	141,764	174,237	215,420	145,540	95,052		
Insulated	17,642	15,989	20,685	21,195	27,183	31,715	24,664	12,454		
Semi-insulated	0	1,295	1,589	1,554	1,179	0	0	0		
Dropframe	4,475	2,245	2,745	3,334	6,681	6,481	2,889	420		
Livestock	1,152	1,146	2,111	1,891	2,773	1,708	1,673	899		
Dry freight	72,771	60,611	96,043	107,008	129,182	167,648	109,177	78,163		
Steel	4,413	1,438	2,322	2,963	5,382	4,995	3,604	806		
Aluminum	59,726	50,496	79,432	86,202	113,268	152,685	96,409	44,676		
Less than 30 feet	8,899	7,726	10,101	9,112	14,353	17,185	10,763	1,911		
30 feet or longer	50,827	42,770	69,331	77,090	98,915	135,500	85,646	44,963		
FRP	8,632	8,677	14,289	17,843	10,532	9,968	9,164	5,904		
Open tops	4,095	3,340	4,032	6,782	7,239	7,868	7,137	3,116		
Tanks (total)	4,444	4,102	3,750	3,877	4,758	5,492	5,386	2,247		
Flammable liquids	1,660	1,704	1,272	1,379	1,650	1,675	1,416	783		
Chemical & acid	1,456	1,408	1,561	1,707	2,131	2,405	1,779	828		
Asphalt	459	229	430	380	412	500	378	192		
All other tanks	869	761	487	411	565	912	1,813	444		
Bulk commodity	1,540	1,009	1,175	1,057	2,665	2,589	1,969	967		
Pole & logging	861	276	422	937	982	1,596	952	592		
Platforms	13,479	11,585	13,432	16,102	21,459	22,797	18,193	11,014		
Lowbeds	8,147	6,163	6,762	6,810	10,708	13,054	11,969	6,653		
Dump trailers	6,733	4,579	5,203	7,210	10,710	9,552	10,359	5,264		
Auto transporters	541	470	1,313	1,315	1,766	892	865	331		
All other trailers	9,478	9,540	6,006	6,669	7,002	7,752	6,869	3,396		
								2,346		
Flow Boy's								346		
CB-4000	33	49	98	105	103	99	79	102	28	PROJECTIONS 105
ST-1000	25	0	4	5	2	14	2	5	0	5



## FLOW BOY MFG. HORIZONTAL DISCHARGE MARKET SHARE

As Compared to All Completed Trailer Sales  
(Over 10,000 Lbs. GVWR)



Completed Trailers Sold in the United States - 1990 to 1997

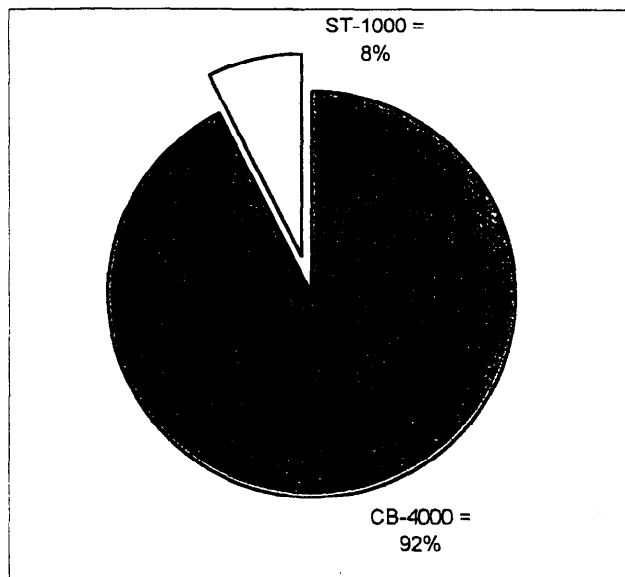
1,463,525

Completed Flow Boy Horizontal Discharge Trailers Sold in  
the United States - 1990 to August 1997

726

## FLOW BOY MFG. HORIZONTAL DISCHARGE SEMI-TRAILER PRODUCTION

1990 To Current Model Year 1998 (October of 1997)



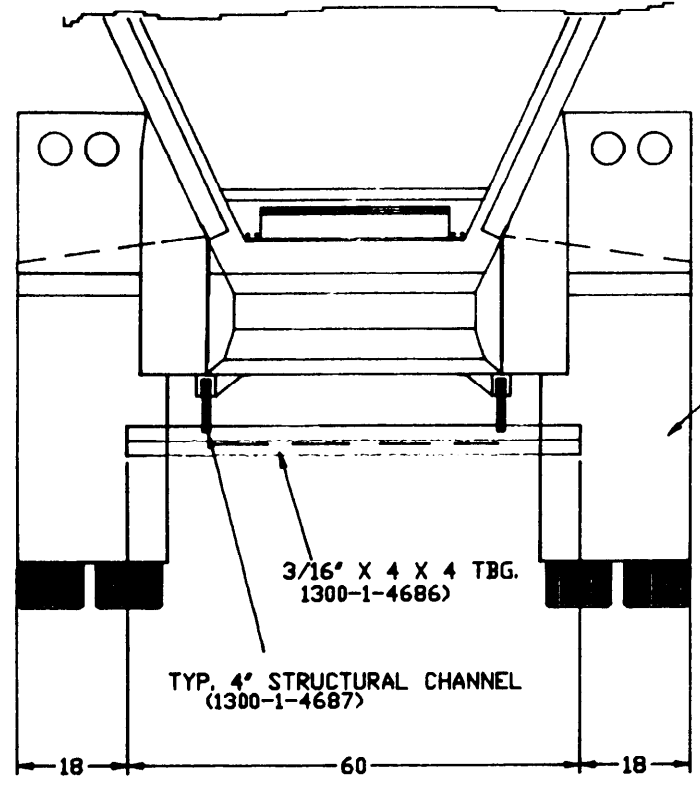
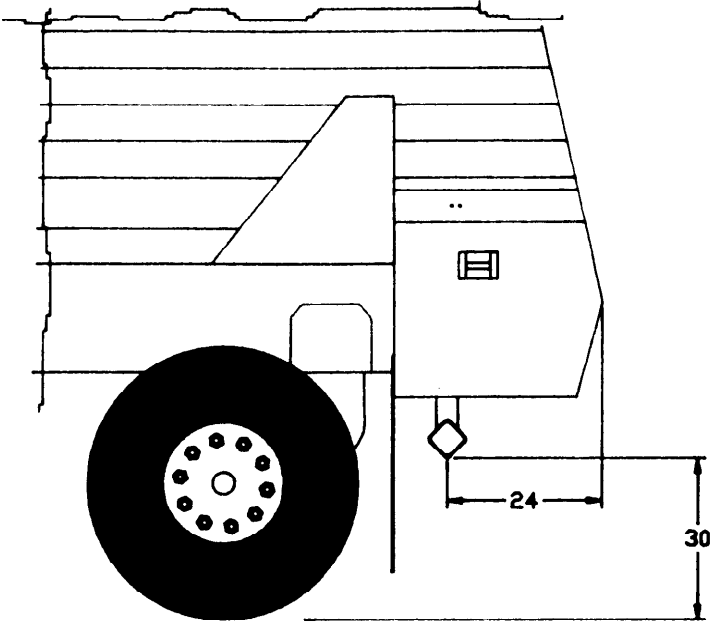
Completed CB-4000 Semi-Trailers

697

Completed ST-1000 Semi-Trailers

57

ATTACHMENT G-2



END CAPS (1300-1-4)

THIS DRAWING IS THE PROPERTY OF FLOW BOY MFG. AND MAY NOT BE REMOVED COPIED OR REPRODUCED IN WHOLE OR IN PART WITHOUT THE EXPRESS WRITTEN PERMISSION OF SUCH OWNER.

MATERIAL SPEC.

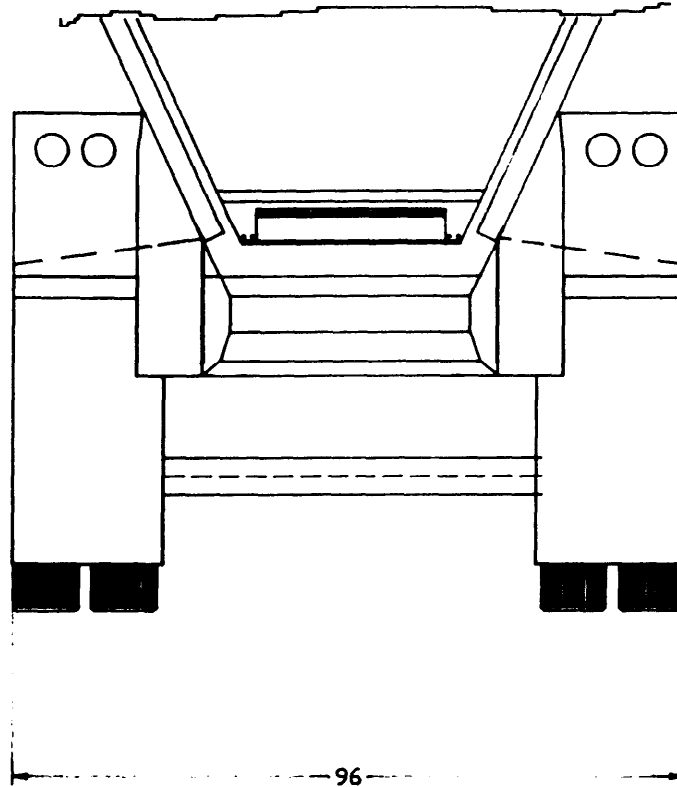
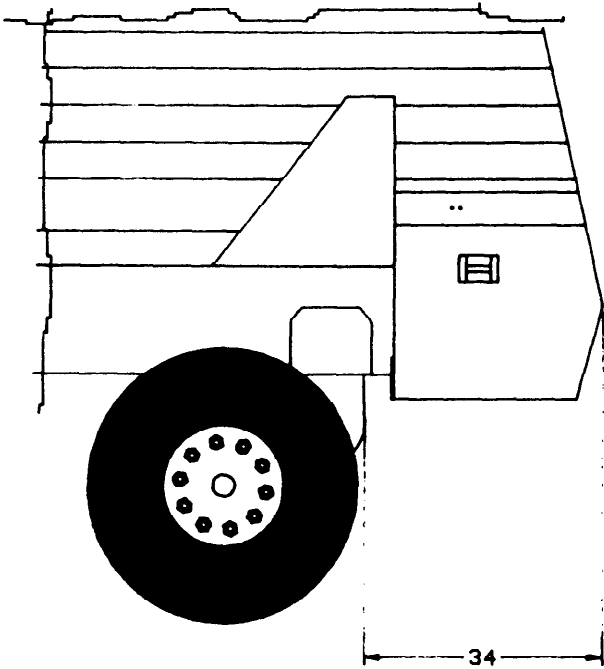
TOLERANCE UNLESS OTHERWISE NOTED  $\pm 1.16"$  &  $\pm 1/2^\circ$  ANGULAR

REV	SDR NO.	BY	/	APP'D	DATE

TITLE  
EXISTING  
ICC BUMPER GUARD

FLOW BOY MFG.  
NORMAN, OKLAHOMA

DRN			SCALE:	ORDER NO.
/			DRAWING NO.	NPN
APP'D				



THIS DRAWING IS THE PROPERTY OF FLOW BOY MFG. AND MAY NOT BE REMOVED COPIED OR REPRODUCED IN WHOLE OR IN PART WITHOUT THE EXPRESS WRITTEN PERMISSION OF SUCH OWNER.

MATERIAL SPEC.

TOLERANCE UNLESS OTHERWISE NOTED  $\pm 1.16"$  &  $\pm 1/2^\circ$  ANGULAR

REV	SDR NO.	BY	/	APP'D	DATE

TITLE

REAR END  
W/O ICC BUMPER

**FLOW BOY MFG.**

NORMAN, OKLAHOMA

DRN			SCALE:	ORDER NO.
✓			DRAWING	NPN
APP'D			NO.	

**DAN HILL & ASSOCIATES, INC.**

dba Flow Boy Mfg.  
dba Total Truck & Trailer  
dba Mabar

P.O. Box 720660  
Norman, OK 73070-4500

405-329-3765  
FAX 405-329-8588

November 3, 1997

Mr. Ricardo Martinez, Administrator  
**NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**  
400 Seventh Street, S.W.  
Washington, D.C. 20590

RE: Applicability of Standard 224; Rear Impact  
Guard Protection

Dear Mr. Martinez,

Dan Hill & Associates, Inc. respectfully requests a formal interpretation as to the applicability of 49 C.F.R., 571.224 (1996) to the Flow Boy trailer. Enclosed is a 7 minute video tape which should be considered along with the written materials contained in the Petition for Exemption which was filed with your office by Dan Hill & Associates, Inc. on October 15. If you require additional information, please contact me.

Congressman J.C. Watts has indicated that your counsel, John Womack, requested that a copy of the video be provided to National Highway Traffic Safety Administration Engineer, Mr. Sam Daniel. Accordingly, I am sending Mr. Daniel and Mr. Womack a copy of the enclosed video presentation. Mr. Daniel and Mr. Womack also received a copy of the October 15 Petition for Exemption. Pursuant to 49 C.F.R., 555.7(c), I previously requested that a representative of our company be allowed to meet informally with an appropriate official of the NHTSA to discuss the Petition for Exemption. I am hopeful that we can discuss this rule interpretation request at the same time. Please advise me as to the time and place of this meeting.

Again, please contact me as soon as possible if you require additional information. I appreciate your attention to this matter.

Sincerely,  
**DAN HILL AND ASSOCIATES INC.**



Dan Hill  
President

cc: Mr. Sam Daniel, Engineer  
NHTSA  
400 Seventh Street S.W.  
Washington, D.C. 20590

The Honorable Representative J.C. Watts  
Congress Of the United States  
c/o Don Smitherman, Attorney/Field Rep.  
2420 Springer Drive, Suite 120  
Norman, OK 73069

The Honorable Representative Ernest Istook  
119 Cannon House Office Bldg.  
Washington, D.C. 20515

The Honorable Senator Jim Inhofe  
453 Russell Senate Office Bldg.  
Washington, D.C. 20510

Mr. John Womack, Counsel  
NHTSA  
400 Seventh Street S.W.  
Washington, D.C. 20590

The Honorable Representative Steve Largent  
Congress of the United States  
428 Cannon House Office Bldg  
Washington D.C. 20515

The Honorable Representative Frank Lucas  
219 Dean McGee, 109 Old Post Office Bldg.  
Oklahoma City, OK 73102

The Honorable Don Nickles  
1820 Liberty Tower, 100 N. Broadway  
Oklahoma City, OK 73102



U.S. Department  
of Transportation

**National Highway  
Traffic Safety  
Administration**

400 Seventh St., S.W.  
Washington, D.C. 20590

**NOV 26 1997**

Mr. Lawrence W. Warren  
President  
Warren Paving Incorporated  
Post Office Box 572  
Hattiesburg, Mississippi 39403

Dear Mr. Warren:

This responds to your letter of October 13, 1997, which raises concerns regarding the National Highway Traffic Safety Administration's (NHTSA) proposal to require rear underride protection on all horizontal discharge trailers. Your letter contends that the rear underride protection requirements will render these trailers useless for your business (and for all asphalt paving contractors across the United States), and that use of horizontal discharge trailers is inherently more safe than alternatively using traditional dump style trucks/trailers in these applications.

NHTSA published a final rule on January 24, 1996 (61 FR 2004), that established two Federal motor vehicle safety standards (FMVSS) which will operate together to reduce the number of injuries and fatalities resulting from the collision of passenger vehicles with the rear end of heavy trailers and semitrailers. This final rule represented the culmination of many years of regulatory development guided by technical research, development, and testing to establish a technically feasible, cost-effective means of mitigating—and hopefully, eliminating passenger compartment intrusion in the rear end collisions described above. Throughout the regulatory development process, the question of what vehicles (if any) should be exempted from any guard requirement(s) to be adopted has been the issue most frequently raised, dating to NHTSA's publishing of an Advance Notice of Proposed Rulemaking on August 29, 1977 (42 FR 43414).

NHTSA received approximately 2,250 individual comments from manufacturers of trucks and trailers, trade associations, consumer interest organizations, local and state governments, and private citizens in response to the Supplemental Notice of Proposed Rulemaking published on January 3, 1992 (57 FR 252). Based on the agency's research and evaluation of comments received, NHTSA established a vehicle standard (FMVSS No. 224; rear impact protection) that requires trailers and semitrailers to be equipped with a rear impact guard certified to the accompanying equipment standard (FMVSS No. 223; rear impact guards). FMVSS No. 224 defines certain types of vehicles which are excluded from the requirement to have rear impact guards. Single unit (unarticulated) trucks, truck tractors, pole trailers, low chassis



2

vehicles, special purpose vehicles, and wheels back vehicles (all defined in detail in the standard) do not have to have rear impact guards. Conversely, all vehicles manufactured on and after January 26, 1998, except ones in the categories listed above, must have a compliant rear impact guard as prescribed in the standards.

While NHTSA received a multitude of comments in response to the Supplemental Notice of Proposed Rulemaking, no adverse comments were received from manufacturers of horizontal discharge trailers, or from paving contractors such as yourself whose work is predicated on compatibility with such units. NHTSA recognizes that the development of a compliant rear impact guard for certain types of trailers may entail challenging engineering design efforts on behalf of the trailer manufacturers. Under one of our regulations (49 CFR Part 555, enclosed), vehicle manufacturers may apply for a temporary exemption from the FMVSS. Under Section 555.6(a), a manufacturer whose yearly production is not more than 10,000 units may ask for an exemption of up to three years on the basis that compliance would cause it substantial economic hardship, and that it has attempted in good faith to comply with the standard from which it has asked to be excused. I have enclosed a copy of 49 CFR Part 555, FMVSS No. 223 and FMVSS No. 224, for your information. Please note that it typically takes three to four months from the date of submittal before a decision can be made on such an application because it has to be submitted for public comment.

I hope this information is helpful to you. If I can be of further assistance, please feel free to contact me or James R. Hackney, Director, Office of Crashworthiness Standards, at (202) 366-1740.

Sincerely,



L. Robert Shelton  
Associate Administrator for Safety  
Performance Standards

3 Enclosures:  
49 CFR Part 555  
FMVSS 223 and 224

NHTSA-97-3122-3

3784

Federal Register / Vol. 63, No. 16 / Monday, January 26, 1998 / Notices

**DEPARTMENT OF TRANSPORTATION****Maritime Administration****[Docket No. MARAD-98-3330]****Information Collection Available for Public Comments and Recommendations****ACTION:** Notice and Request for Comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

**DATES:** Comments should be submitted on or before March 27, 1998.

**FOR FURTHER INFORMATION CONTACT:**

Patricia Ann Thomas, Office of Maritime Labor, Training and Safety, MAR-250, Room 7302, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone number 202-366-2646 or fax number 202-498-2288. Copies of this collection can also be obtained from that office.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Merchant Marine Medals and Awards.

*Type of Request:* Extension of a currently approved information collection.

*OMB Control Number:* 2133-0506.

*Form Number:* No form is required for this collection.

*Expiration Date of Approval:* September 30, 1998.

*Summary of Collection of Information:* This information collection provides the Maritime Administration with a method for documenting and processing requests for merchant marine medals and decorations to masters, officers, and crew members of U.S. ships in recognition of their service in areas of danger during World War II, Korean War, Vietnam War and Operation DESERT STORM and the replacement of previously issued awards.

*Need and Use of the Information:* The information collection is used by MARAD personnel to process and verify requests for service awards. The issuance of awards is based upon requests from the public.

*Description of Respondents:* Eligible merchant seamen.

*Annual Responses:* 2500 responses.

*Annual Burden:* 2500 hours.

*Comments:* Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk,

U.S. DOT Dockets, Room PL-401, 400 Seventh Street, S.W., Washington, D.C. 20590-0001. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at <http://dms.dot.gov>.

Dated: January 20, 1998.

By Order of the Maritime Administrator.

Joel E. Richard,

Secretary.

[FR Doc. 98-1710 Filed 1-23-98; 8:45 am]

BILLING CODE 4910-01-P

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****[Docket No. NHTSA-97-3122; Notice 2]****Dan Hill & Associates, Inc.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224**

This document grants the application by Dan Hill & Associates, Inc., of Norman, Oklahoma, for a one-year temporary exemption from Motor Vehicle Safety Standard No. 224 *Rear Impact Protection*. The basis of the application was that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

Notice of receipt of the application was published on November 21, 1997, and an opportunity afforded for comment (62 FR 62398).

The applicant manufactures and sells a horizontal discharge trailer ("Flow Boy") that is used in the road construction industry to deliver asphalt and other road building materials to the construction site. The Flow Boy is designed to connect with and latch onto various paving machines ("pavers"). The Flow Boy, with its hydraulically controlled horizontal discharge system, discharges hot mix asphalt at a controlled rate into a paver which overlays the road surface with asphalt material.

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more, including

Flow Boy trailers, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear Impact guards*. Installation of the rear impact guard will prevent the Flow Boy from connecting to the paver. Thus, Flow Boy trailers will no longer be functional and contractors will be forced to use standard dump body trucks or trailers with their inherent limitations.

The applicant, which manufactured 81 Flow Boy trailers in 1996 (plus 21 other trailers), asked for a one-year exemption in order to explore the feasibility of a rear impact guard that will allow the Flow Boy trailer to connect to a conventional paver. In the absence of an exemption, it believes that approximately 60 percent of its work force would have to be laid off. Its gross revenues would decrease by \$6,000,000 (these have averaged \$13,885,000 over its 1994, 1995, and 1996 fiscal years). Present studies show that the placement of the retractable rear impact guard would likely catch excess asphalt as it was discharged into the pavement hopper. Further, the increased cost of the Flow Body would likely cause contractors to choose the cheaper alternative of dump trucks. Finally, the applicant asserted that the increased weight of the retractable rear impact guard would significantly decrease the payload of the Flow Boy.

Applicant sent its Product Specialist to Germany in 1994 to view underride protection guards installed by a German customer on Flow Boy trailers but the technology proved inapplicable because of differences between German and American pavers. Manufacturers of paving machines are not interested in redesigning their equipment to accommodate a Flow Boy with a rear impact guard. The applicant has contacted a British manufacturer of a retractable rear impact guard but the information received to date does not look encouraging. If an exemption is granted, the applicant will continue to explore the feasibility of a retractable rear guard that allows connection with a paver.

The applicant believes that an exemption would be in the public interest and consistent with traffic safety objectives because the Flow Boy aids in the construction of the national road system. It spends very little of its operating life on the highway and the likelihood of its being involved in a rear-end collision is minimal. In addition, the design of the Flow Boy is such that the rear tires act as a buffer and reduce the likelihood of impact with the trailer.

No comments were received in response to the **Federal Register** notice.

The applicant differs from the usual hardship petitioner in that it is a corporation whose net revenues are positive and healthy. The hardship to be borne in this instance is the effect of a denial upon the company. The applicant's production is limited in number; it produced 102 trailers in 1996, of which 86 are of the type for which exemption is sought. This is approximately 85 percent of its production. Although the remaining trailer types appear to contribute a proportionally greater part of the company's gross revenues, these revenues would decline by a significant percentage. There is also the economic cost, not discussed by the company, of maintaining unused manufacturing facilities and settling accounts with suppliers for goods ordered and canceled.

The company's efforts to comply appear to have been stymied by the unacceptability of a redesign of the Flow Boy to its consumers. Its application indicates that, for the past three years, it has looked at home and abroad in search of a solution that meets both safety and market needs. It will continue to do so if granted an exemption.

The applicant has argued that an exemption is in the public interest because the Flow Boy aids in construction of the national highway system. While the company did not quantify its work force, it estimated that approximately 60 percent of it would have to be laid off in the wake of a denial. Thus, the company could have argued that continued full employment of its work force is also in the public interest.

Finally, the company believes that an exemption is consistent with objectives of motor vehicle safety because the Flow Boy spends very little of its operating life on the highway and the likelihood of it being involved in a rear-end collision is minimal. NHTSA understands this to mean that proportion of time spent in transit on the roads from one job site to another will be small in comparison with the time spent at rest at construction sites amidst other road equipment. This indicates that the exposure of a Flow Boy without a rear underride guard to a potential crash situation will be reduced. The small number of trailers that may be produced under the exemption, less than 100, further reduces the crash potential.

In consideration of the foregoing, it is hereby found that requiring compliance with Standard No. 224 as of its effective date would cause substantial economic hardship to a manufacturer that has

tried in good faith to comply with the standard. It is also found that an exemption would be in the public interest and consistent with the objectives of motor vehicle safety. Accordingly, the company of Dan Hill & Associates is hereby granted NHTSA Temporary Exemption No. 98-1 from 49 CFR 571.224 Motor Vehicle Safety Standard No. 224 *Rear Underride Protection*, expiring February 1, 1999.

**Authority:** 49 U.S.C. 30113, 49 CFR part 555; delegation of authority at 49 CFR 1.50.

Issued on January 20, 1998.

**Ricardo Martinez,**

*Administrator.*

[FR Doc. 98-1784 Filed 1-23-98; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 33542]

#### CSX Transportation, Inc.—Trackage Rights Exemption—Consolidated Rail Corporation and Indiana Harbor Belt Railroad

Consolidated Rail Corporation (Conrail), as owner, and Indiana Harbor Belt Railroad Company (IHB), as operator,<sup>1</sup> have agreed to grant overhead trackage rights to CSX Transportation, Inc. (CSXT), to operate its trains, locomotives, cars, and equipment with CSXT's own crews over Conrail's Kankakee Line between Michigan Avenue, Indiana Harbor, IN, milepost 0.0±, and Osborn, IN, milepost 4.8±, at the connection between Conrail's Kankakee Line and the Norfolk and Western Railway Company, a total distance of approximately 4.8 miles. The trackage rights are restricted to bridge traffic only between the termini of the trackage rights for trainload movements of finished automobiles and associated empty equipment to and from the Ford Mixing Center in the Calumet Yard area.

The transaction is expected to be consummated on January 19, 1998, the effective date of the exemption.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*.

<sup>1</sup> Pursuant to a trackage rights agreement, dated April 9, 1996, Conrail granted trackage rights to IHB to operate over portions of its railroad, including that portion of the Kankakee Line which CSXT will acquire upon the effective date of this exemption. Since IHB acts as agent on behalf of Conrail in the performance of supervision, control and maintenance of this line of railroad, IHB is included as a party to the trackage rights agreement.

354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33542, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001 and served on: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street, J-150, Jacksonville, FL 32202.

Decided: January 16, 1998.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

Vernon A. Williams,

*Secretary.*

[FR Doc. 98-1755 Filed 1-23-98; 8:45 am]

**BILLING CODE 4910-00-P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

#### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(d)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Regulations Governing United States Savings Bonds Series E/EE and H/HH.

**DATES:** Written comments should be received on or before March 30, 1998, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

# **TAMARA BEAM CAIN**

Attorney and Counselor

3750 West Main  
Suite 106  
Norman, Oklahoma 73072

Telephone: 405-360-6010  
Facsimile: 405-360-6042  
E-mail: [tcain@telepath.com](mailto:tcain@telepath.com)

November 10, 1998

Mr. John Womack, General Counsel  
National Highway Traffic Safety Administration  
United States Department of Transportation  
400 Seventh Str. S.W.  
Washington, D.C. 20590

**Re: Dan Hill & Associates, Inc.'s Petition for  
Renewal of Exemption from Compliance  
with Standard No. 224**

Dear Mr. Womack:

Please find enclosed the original and two (2) copies of Applicant Dan Hill & Associates, Inc.'s Petition for Renewal of Temporary Exemption No. 98-1 from 49 C.F.R. §571.224, requesting an additional two years for its Flow Boy trailers to comply with Standard No. 224. The horizontal discharge Flow Boy trailer is used in the road construction industry to haul hot mix asphalt. Installation of a fixed rear impact guard on the Flow Boy will prevent the trailer from connecting to a paving machine.

Like Trinity Trailer Mfg., Inc.(NHTSA-98-3306), Applicant has been unable to locate an automatically retracting rear impact guard in the United States. Accordingly, Applicant is presently working with the Pennsylvania distributor of a European retractable **"swing out"** rear impact guard to make design changes in the guard to accommodate the functions of the Flow Boy trailer. However, unlike Trinity, Applicant cannot comply with Standard No. 224 within one year, because the retractable **"swing out"** guard which is available in Europe will not be available in the U.S. for several more months. The retractable **"swing in"** guard which is not even available in Europe yet, certainly won't be available in the U.S. within a one year time period. Accordingly, Applicant, who in good faith has tried to comply with the standard, seeks a two year renewal of its Temporary Exemption.

Applicant prepared a video last year which demonstrated the inability of the Flow Boy trailer equipped with a fixed Standard No. 223 rear impact guard, to connect to a paving machine and discharge hot mix asphalt into the paver hopper. The video was provided to your office last year with the Petition for Temporary Exemption. If you need additional copies of the video please contact me and I will send additional copies..

Pursuant to 49 C.F.R. §555.7(c), I am requesting that a representative of our company be allowed to meet informally with an appropriate official of the NHTSA to discuss the Petition for Renewal of Exemption and the action to be taken in response. Please advise as to the time and place of this meeting.

Applicant requests that certain competitive information and data be withheld from public disclosure pursuant to 49 C.F.R. §555.5(b)(6). Also enclosed is a Certificate in Support of Request for Confidentiality with a copy of the Petition for Renewal of Exemption that has been edited to delete the information to be withheld. Please contact me if you have any questions or require additional information. Also, I am enclosing two additional copies of the Petition, please file-stamp them and return them to me in the enclosed envelope.

Sincerely yours,

A handwritten signature in black ink, reading "Tamara Beam Cain". The signature is fluid and cursive, with the first name "Tamara" being the most prominent.

Tamara Beam Cain

General Counsel, Dan Hill & Associates, Inc.

cc: David Griffis

**BEFORE THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

**APPLICANT:**           **DAN HILL &**                 )  
                                    **ASSOCIATES, INC.**                 )

**) CAUSE NO.**

**RELIEF SOUGHT:**   **RENEWAL OF TEMPORARY**         )  
                                    **EXEMPTION FROM**                 )  
                                    **COMPLIANCE WITH FEDERAL**         )  
                                    **MOTOR VEHICLE SAFETY**                 )  
                                    **STANDARD NO. 224 FOR**                 )  
                                    **TWO YEARS**

## **PETITION FOR RENEWAL OF EXEMPTION**

**DAN HILL & ASSOCIATES, INC.** (“Applicant”) files this Petition for Renewal of National Highway Traffic Safety Administration (“NHTSA”) Temporary Exemption No. 98-1 from 49 C.F.R. §571.224 Motor Vehicle Safety Standard No. 224 Rear Underride Protection (“Standard No. 224”) which expires February 1, 1999. Applicant has tried in good faith to comply with Standard No. 224 within the one year temporary exemption period granted by NHTSA, but finds that unless it is granted an additional two years to comply with the standard, Applicant will suffer substantial economic hardship.

As set forth in Applicant's original Petition for Exemption which was filed with NHTSA on October 15, 1997, and incorporated by reference herein, Applicant manufactures and sells a horizontal discharge trailer ("Flow Boy") that is used in the road construction industry to deliver asphalt and other road building materials to the construction site. Applicant asserts that the general public benefits from better and improved roads as a result of the Flow Boy discharge system. Applicant also asserts that contractors benefit from the flow Boy discharge system because they operate more efficiently, experience greater safety records (which results in lower

costs), and produce better quality roads. The Flow Boy trailer offers the following advantages over a standard dump body truck or trailer which must raise its bed and rely on gravity to unload road building materials:

1. **Avoidance of Overhead Obstructions.** Dangerous overhead obstructions, such as utility lines and overpasses, can be avoided with the Flow Boy delivery system;
2. **Stability.** The Flow Boy trailer eliminates the danger of tipping over on elevated steep grades, uneven terrain, and in high wind conditions;
3. **Insulation.** Flow Boy trailers are insulated thereby allowing the contractor additional time to load and unload the asphalt before it begins to set;
4. **Reduction of Segregation.** The design of the Flow Boy reduces asphalt material segregation during transport; and
5. **Flexibility.** Flow Boys allow the contractor greater flexibility by controlling the rate of discharge of the road building material.

During the road building process, the Flow Boy trailer discharges asphalt or other road building material into a lay down machine (“paver”) which overlays the road surface. The attachment of a **fixed** rear impact guard prevents the Flow Boy from connecting to a paver. Because other methods of compliance with Standard No. 224 have been eliminated for various reasons, Applicant has concentrated its efforts this past year in investigating the feasibility of installing a **retractable** rear impact guard thereby retaining Flow Boy’s ability to connect to a paver.

Because Europe has had under-ride regulations in effect for several years, Applicant’s investigations into the engineering and manufacturing of a retractable rear impact guard have led to Europe because they have several more years of under-ride experience than the United States engineers and manufacturers contacted by Applicant. Applicant finds that although the **fixed** guard is readily available in the European market and now the United States market,

manufacturers have only recently begun to manufacture a **retractable** guard for the European market. Applicant has been unable to locate a United States manufacturer of a **retractable** guard. The European **retractable** guard has not even been priced and is not yet available for distribution in the United States. Furthermore, the European **retractable** guard has been installed on a Flow Boy. Many problems are already apparent on the installation, because the **retractable** guard “swings out”. The European manufacturer has requested additional time to engineer a **retractable** guard that “swings in”. Applicant believes that this design change will allow compliance with Standard No. 224 by February 1, 2001. Accordingly, Applicant submits the following in support of its Petition for Renewal of Exemption:

1. Applicant, Dan Hill & Associates, Inc., d/b/a Flow Boy Manufacturing, Post Office Box 720660, Norman, Oklahoma 73070, is a corporation incorporated under the laws of the State of Oklahoma.
2. Applicant requests a renewal of NHTSA Temporary Exemption No. 98-1 from 49 C.F.R. §571.224 Motor Vehicle Safety Standard No. 224 Rear Underride Protection, expiring February 1, 1999, which requires installation of rear impact guards on trailers and semitrailers with a gross vehicle weight rating of 4536 kg or more.
3. Standard No. 224 affects the following equipment (collectively referred to as “Flow Boy”) manufactured by Applicant:
  - A. ST-1000 Semi-Trailer;
  - B. CB-4000 Semi-Trailer; and
  - C. Generation “X” Semi-Trailer (This horizontal discharge trailer is in its later design stages and has not been assigned a name or model number as of yet).
4. The technology is not available at the present time to develop a “swing in” retractable



guard that will allow the Flow Boy to connect to a paver. Accordingly, Applicant cannot comply with Standard No. 224 before February 1, 2001, and the cost of modification referred to in 49 C.F.R. §555.6(a)(1)(ii) and (iii) cannot be determined, is not applicable in this situation, and has not been included in this Petition. Applicant has, however, determined a **minimum** cost of compliance on a per trailer basis of \$1,725.00. (See Attachment "A", September 15, 1997 Interoffice Memo from Chip Herring to David Griffis). However, this is the cost for a **fixed** rear impact guard which has been eliminated as an alternative means of compliance, because it impedes the intended function of the Flow Boy. This cost estimate is only included because it demonstrates a **minimum** cost of modification since a "swing in" retractable rear impact guard will be considerably more expensive than a fixed rear impact guard.

5. Applicant has a fiscal year end of October 31. Accordingly, corporate balance sheets and income statements for 1995, 1996, 1997, and projected 1998 are provided along with the proforma balance sheet and income statement for the fiscal year following denial of the petition (See Attachment "B", Dan Hill & Associates, Inc., Consolidated Balance Sheet and Income Statement with Proforma).
6. If Applicant's petition for renewal of exemption from compliance with Standard No. 224 is denied, the following hardships would likely result:
  - A. Applicant would probably have to cease manufacturing operations for Flow Boy trailers produced for domestic sales. Applicant could still produce Flow Boy trailers for international delivery; however, projections for future international sales are not good because of the global financial turmoil affecting Latin and South America. Ultimately, approximately seventy percent (70%) of Applicant's work force would be laid off resulting in McClain County losing one of its largest single

employers if Applicant were unable to diversify its manufacturing operations;

- B. Applicant's gross sales would decrease by approximately \$8,273,117.00 if the exemption renewal were not granted. The projected decrease comes primarily from decreased domestic and international Flow Boy trailers. Domestic sales would decrease by approximately \$6,000,000.00. International sales are projected to decrease from approximately \$2,500,000.00 to \$800,000.00 regardless of the exemption renewal, because of the unstable world economy and declining international markets. Clearly, Applicant faces an uncertain economic future because of its growing reliance on an international market.
- C. Furthermore, Applicant's gross sales volume has become increasingly dependent on Flow Boy trailers and not on its other lines. For 1998, the projected percent of total corporate gross sales from Flow Boy trailers (units), Flow Boy Parts, and Flow Boy International sales is 33.28 %, 8.87%, and 14.26% respectively, for a total of 56.41%. In 1997, only 38.03% of total corporate gross sales resulted from Flow Boy sales. In 1996, only 30.5% of total corporate gross sales resulted from Flow Boy sales. In the event the exemption renewal is not granted, the projected percentage of gross sales volume resulting from Flow Boy sales would decrease to 16.37%. This number would continue to decrease as international sales would surely decrease over time since the sales price per Flow Boy unit would increase due to rising production costs per unit.
- D. In the event that the exemption renewal is not granted, gross sales would plummet as of February 1999, while costs related to real estate and equipment leases would remain constant until leases expired. Applicant would also have to settle accounts with suppliers for goods ordered and canceled.
- E. Ultimately, Applicant would likely lose all available lines of credit, and be put out of business if it was unable to adequately diversify its manufacturing operations;
- F. Applicant's profitability stands to dramatically increase in the next few years as the direct result of contractors preparing for increased road building as the result of the significant increase in federal and state transportation dollars that are being allocated to road construction, if the exemption is denied Applicant would not experience any sales increase, moreover, Applicant would also lose all existing Flow Boy trailer sales revenue;
- G. The road construction industry would be adversely affected because it would lose a safe alternative to hauling hot mix asphalt in conventional dump trucks. Accordingly, the likelihood of worker's on the job injuries would increase; and

H. The quality of roads could be adversely affected if conventional dump trucks are contractors' only source of hauling hot mix asphalt because of the following:

1. The sudden surge of materials which can happen during the unloading of conventional dump trucks can result in the accidental discharge of materials and the overloading of the paver hopper;
2. The segregation of aggregate road building material which is a common problem associated with the delivery of hot mix asphalt in conventional dump trucks; and
3. The inability of the conventional dump truck to deliver hot mix asphalt in a workable condition over long distances..

7. Applicant has worked diligently over the past few years to comply with Standard Nos. 223 and 224. Following are the efforts made by Applicant since receiving a one-year exemption from compliance with Standard No. 224 on January 26, 1998:

- A. Upon receipt of the one-year exemption from Standard No. 224, Applicant's Product Engineer was assigned the task of locating a source for a retractable rear impact guard. Because he was associated with the University of Oklahoma, he was also instructed to use available engineering resources to design a retractable rear impact guard that would meet the specifications outlined in Standard No. 223 (See Attachment "C", January 26, 1998 Inter-office Memo from David Griffis, Vice-President to Terry Hill, President).
- B. Although several domestic manufacturers of **fixed** rear impact guards were located, only one potential source for a **retractable** rear impact guard was located. It is a Pennsylvania distributor ("Distributor") of a European manufacturer. (See Attachment "D", January 26, 1998 Inter-office Memo from David Griffis, Vice-President to Terry Hill, President).
- C. In March of 1998, Applicant visited with the distributor of the European retractable rear impact guard at a trade show. The distributor advised Applicant that it was aware of the design difficulties plaguing Applicant and that the fixed guard was not a viable method of compliance with the under-ride regulations for Flow Boy trailers. Distributor advised Applicant that the European manufacturer had begun manufacturing a retractable guard that met European specifications and was in the process of designing a retractable guard that would meet Standard No.

223 specifications and attach to the Flow Boy trailer while allowing the Flow Boy to connect to a paver. Applicant was quite hopeful that the European guard would be reengineered to meet Standard No. 223 certification requirements and that Applicant could begin installing it on Flow Boys as of February 1, 1999 (See Attachment "E", March 23, 1998 Inter-office Memo from David Griffis, Vice-President to Hemkumar Joshi, Product Engineer).

- D. In March 1998, Applicant contacted one of its European agents, Proteus Equipment ("Proteus"), regarding the installation of the retractable rear impact guard on the Flow Boy (See Attachment "F", March 23, 1998 Inter-office Memo from David Griffis, Vice-President to Terry Hill, President and Attachment "G", March 24, 1998 Inter-office Memo from Scott Smith, Flow boy International to David Griffis and Terry Hill).
- E. On April 1, 1998 Applicant was advised by Proteus that it was having the same under-ride compliance problems in Great Britain that Applicant was experiencing in the United States. Applicant was advised that the European retractable guard would be installed on the Flow Boy trailer and put into service on April 20, 1998 (See Attachment "H", April 1, 1998 Inter-office Memo from Scott Smith, Flow Boy International to David Griffis and Terry Hill and Attachment "I", April 1, 1998 letter from Proteus Equipment to Scott Smith).
- F. Applicant's Product Engineer was unable to obtain engineering outsourcing on the retractable guard through his University of Oklahoma engineering contacts because of the stringent certification requirements of Standard No. 223 (See Attachment "J", May 20, 1998 Inter-office Memo from David Griffis, Vice-President to Terry Hill, President).
- G. Proteus traveled to Norman, Oklahoma to meet with Applicant. Proteus advised Applicant that it was experiencing the following problems with the European retractable rear impact guard (See Attachment "K", August 25, 1998 Inter-office Memo from Scott Smith, Flow Boy International to David Griffis and Terry Hill, Attachment "L", November 3, 1998 Inter-office memo from Scott Smith, Flow Boy International to David Griffis and Terry Hill, and Attachment "M", October 28, 1998 letter from Proteus Equipment to Sam Daniel, NHTSA Engineer):
  - 1. Workers' safety;
  - 2. Reduced payload because of retractable guard's weight;
  - 3. Accumulation of asphalt paving material on the guard; and
  - 4. Cost prohibitive even for manual guard, even more costly for automated guard.
- H. Applicant spoke with the distributor of the European retractable rear impact

guard concerning the problems experienced by Proteus. Applicant was advised that the guard used by Proteus on the Flow Boy would not be available in the United States for at least three more months and that at the present time he could not even quote a price on the guard. The distributor conceded that the guard did not work well on the Flow Boy and that its design caused an accumulation of asphalt on the guard. This caused workers' safety problems because of the increased weight of the bumper due to the accumulated asphalt, highway safety due to accumulated material falling off and damaging other vehicles or pedestrians, and decreased payload because of the increased weight of the accumulated material. Distributor advised Applicant that its retractable guard was designed to "swing out" and that the Flow Boy needed a retractable guard that was designed to "swing in" so that the guard was not placed in the paver hopper during discharge and exposed to asphalt accumulation. Distributor requested additional time from Applicant to develop a "swing in" guard. (See Attachment "N", November 3, 1998 Inter-office Memo from David Griffis, Vice-President to Terry Hill, President and Attachment "O", Photographs of Retractable Guard with Asphalt Accumulation).

- I. On November 3, 1998 it was definitively determined that because technology was not available to produce a "swing in" retractable impact guard in compliance with the certification requirements of Standard No. 223 before February 1, 1999, Applicant should apply for a two year exemption from compliance with Standard No. 224 (See Attachment "N", November 3, 1998 Inter-office Memo from David Griffis, Vice-President to Terry Hill, President).
8. Applicant has attempted to comply with Standard No. 224. The following alternative methods of compliance have proved unsuccessful and have been eliminated for the following reasons:
- A. **Installation of Fixed Rear Impact Guard.** A fixed rear impact guard installed pursuant to the space limitations set forth in Standard No. 224 prevents the Flow Boy from connecting to a paver, rendering the Flow Boy trailer virtually useless;
  - B. **Redesign of Pavers.** Manufacturers of pavers have denied Applicant's requests to redesign their pavers to accommodate rear impact guards; and
  - C. **Installation of Removable Rear Impact Guard.** Applicant has eliminated this alternative because of the likelihood of workers failing to replace the rear impact guard before transit, as well as the likelihood of injury to the workers because of the weight of the bumper.

9. Applicant expects to install a retractable “swing in” rear impact guard on the Flow Boy trailers thereby achieving full compliance with Standard No. 224 by February 1, 2001. The following steps will be taken by Applicant to achieve full compliance with Standards 224:
- A. Applicant will likely send an engineering representative to England to view the Proteus guard installation and work with the distributor’s engineers to develop a “swing in” guard thereby avoiding the collection of asphalt on the guard;
  - B. The manufacturer of the guard will have to obtain certification of the guard pursuant to the energy absorbing specifications set forth in Standard No. 223; and
  - C. The guard will be installed on several Flow Boy trailers pursuant to the space requirements set forth in Standard No. 224 and tested for a period of time to determine whether further design enhancements are necessary.
10. Applicant has produced 130 units for the domestic market and 35 units for the international market in the twelve (12) month period prior to filing this Petition for Exemption.
11. The purpose of Standard 224 “is to reduce the number of deaths and serious injuries occurring when light duty vehicles impact the rear of trailers...” Applicant contends that application of this standard to the Flow Boy trailer will not further the purpose of the Standard and that a permanent, as well as temporary, exemption would be in the public interest because of the following:
- A. There are so few trailers of this type on the highways today. Because of the proximity of hot mix plants to road construction sites the trailers spend very limited amounts of time on the highways. Furthermore, of the 233,483 trailers completed in 1997, Applicant manufactured only 107 of these. Accordingly, the likelihood of this type of trailer being involved in a rear-end collision on the highway is extremely minimal ( See Attachment “P-1”, Chart of Annual Trailer Production by Type, and Attachment “P-2”, Pie Chart showing Horizontal Market Share, and Attachment “P-3” detailing U.S. trailer manufacturing breakdown by trailer type); and

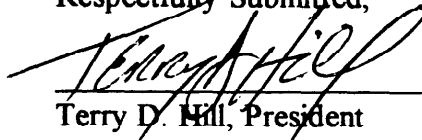
B. The purpose of Standard 224 is to reduce the number of deaths and serious injuries occurring when light duty vehicles impact the rear of semi-trailers. Application of this Standard to Flow Boys does not significantly further the purpose of this rule, because presently the ICC bumper is placed 24" from the rear of the trailer and the tires are only 34" from the rear of the trailer. Accordingly, the tires act as a buffer and reduce the likelihood of impact with the semi-trailer and the vehicle's windshield or interior of the vehicle significantly (See Applicant's 1997 Petition for Exemption).

12. By separate letter, Applicant will specify the parts of the information and data contained in this Petition for Renewal of Exemption which it requests be withheld from public disclosure.
13. Pursuant to 49 C.F.R. §555.7(c), Applicant requests an informal appearance before an appropriate official of the NHTSA to discuss the Petition for Exemption and the action to be taken in response to the Petition. Applicant also seeks additional information regarding the pending Petition for Rulemaking filed by Thieman Tailgates, Inc. which apparently seeks to change the definition of a special purpose vehicle. If the definition of special purpose vehicle is changed, the Flow Boy may be classified as a special purpose vehicle and exempt from compliance with Standard No. 224 (See Attachment "Q", which refers to NHTSA's Interpretation received by the National Truck Equipment Association on September 9, 1998).

**Applicant** respectfully requests that the NHTSA renew its exemption for compliance with Standard No. for a period of two years so that it can design, engineer, manufacture and install a retractable rear impact guard meeting Standard Nos. 223 and 224 that will allow the Flow Boy trailer to connect to a paver pursuant to its intended use and design.

Dated this 10th day of November, 1998.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Terry Hill", is written over a horizontal line.

Terry D. Hill, President

Dan Hill & Associates, Inc.



## **INDEX OF ATTACHMENTS**

<b>ATTACHMENT "A":</b>	<b>September 15, 1997 Interoffice Memo from Chip Herring to David Griffis</b>
<b>ATTACHMENT "B"</b>	<b>Dan Hill &amp; Associates, Inc., Consolidated Balance Sheet and Income Statement with Proforma</b>
<b>ATTACHMENT "C"</b>	<b>January 26, 1998 Inter-office Memo from David Griffis, Vice-President to Terry Hill, President</b>
<b>ATTACHMENT "D"</b>	<b>January 26, 1998 Inter-office Memo from David Griffis, Vice-President to Terry Hill, President</b>
<b>ATTACHMENT "E"</b>	<b>March 23, 1998 Inter-office Memo from David Griffis, Vice-President to Hemkumar Joshi, Product Engineer</b>
<b>ATTACHMENT "F"</b>	<b>March 23, 1998 Inter-office Memo from David Griffis, Vice-President to Terry Hill, President</b>
<b>ATTACHMENT "G"</b>	<b>March 24, 1998 Inter-office Memo from Scott Smith, Flow boy International to David Griffis and Terry Hill</b>
<b>ATTACHMENT "H"</b>	<b>April 1, 1998 Inter-office Memo from Scott Smith, Flow Boy International to David Griffis and Terry Hill</b>
<b>ATTACHMENT "I"</b>	<b>April 1, 1998 letter from Proteus Equipment to Scott Smith, Flow Boy International</b>
<b>ATTACHMENT "J"</b>	<b>May 20, 1998 Inter-office Memo from David Griffis, Vice-President to Terry Hill, President</b>
<b>ATTACHMENT "K"</b>	<b>August 25, 1998 Inter-office Memo from Scott Smith, Flow Boy International to David Griffis and Terry Hill</b>
<b>ATTACHMENT "L"</b>	<b>November 3, 1998 Inter-office memo from Scott Smith, Flow Boy International to David Griffis and Terry Hill</b>
<b>ATTACHMENT "M"</b>	<b>October 28, 1998 letter from Proteus Equipment to Sam Daniel, NHTSA Engineer)</b>
<b>ATTACHMENT "N"</b>	<b>November 3, 1998 Inter-office Memo from David Griffis, Vice-</b>

President to Terry Hill, President

ATTACHMENT "O"	Photographs of Retractable Guard with Asphalt Accumulation
ATTACHMENT "P-1"	Chart of Annual Trailer Production by Type
ATTACHMENT "P-2"	Pie Chart Demonstrating Horizontal Discharge Market Share
ATTACHMENT "P-3"	U.S. trailer manufacturing breakdown by trailer type
ATTACHMENT "Q"	NHTSA Interpretation received by the National Truck Equipment Association on September 9, 1998



P.O. Box 720660 • Norman, Oklahoma U.S.A. • 73070-4500  
Phone: 405-329-3765 • FAX: 405-329-8588 • Telex: 272-485 OES NORM

## **INTER-OFFICE MEMORANDUM**

**To: David Griffis**

**From: Chip Herring**

**Date: September 15, 1997**

**Re: 223 Bumper Cost**

<b>1. Mechanical retracting parts</b>	<b>\$ 400.00</b>
<b>2. Hydraulic component for retracting</b>	<b>\$ 600.00</b>
<b>3. Structural components</b>	<b>\$ 150.00</b>
<b>4. Energy absorption</b>	<b>\$ 200.00</b>
<b>5. Certification plate</b>	<b>\$ 10.00</b>
<b>6. Labor overhead for installation</b>	<b>\$ 350.00</b>
<b>7. Caution and operation decals</b>	<b><u>\$ 15.00</u></b>

**TOTAL COST PER UNIT**

**\$1,725.00**

**ATTACHMENT "A"**

**DAN HILL & ASSOC., INC.  
PROFIT & LOSS STATEMENT**

	PROFORMA Oct-99		PROJECTED Oct-98		Oct-97		Oct-96		Oct-95	
	YEAR TO DATE AMOUNT	RATIO/ SALES	YEAR-T-DATE AMOUNT	RATIO/ SALES	YEAR-T-DATE AMOUNT	RATIO/ SALES	YEAR-T-DATE AMOUNT	RATIO/ SALES	YEAR-T-DATE AMOUNT	RATIO /SALES
<b>SALES</b>										
SALES-FLOW BOY UNITS **	200,000	2.11%	5,903,192	33.28%	4,645,725	26.70%	3,490,115	23.82%	3,962,529	28.13%
SALES-FLOW BOY PARTS **	550,000	5.81%	1,572,565	8.87%	748,696	4.30%	698,576	4.77%	800,140	5.68%
SALES-FLOW BOY HALF ROUNDS	500,000	5.28%	495,159	2.79%	578,819	3.33%	774,252	5.28%	0	0.00%
SALES-FLOW BOY PUP TRAILERS	600,000	6.34%	551,068	3.11%	901,644	5.18%	697,396	4.76%	0	0.00%
SALES-FLOW BOY INTERNATI ONAL **	800,000	8.45%	2,528,757	14.26%	1,222,323	7.03%	279,703	1.91%	691,084	4.91%
SALES-TOTAL TRUCK	2,800,000	29.58%	2,602,424	14.67%	3,046,944	17.51%	4,586,190	31.30%	5,531,975	39.28%
SALES-MABAR EQUIPMENT	4,000,000	42.26%	3,997,601	22.54%	6,213,301	35.71%	4,114,728	28.08%	3,223,039	22.88%
CASH DISCOUNTS	-65,000	0.69%	-89,029	-0.50%	-88,208	-0.51%	-101,979	-0.70%	-229,737	-1.63%
FREIGHT OUT	80,000	0.88%	176,380	0.99%	129,051	0.74%	115,493	0.79%	105,292	0.75%
<b>GROSS SALES</b>	<u>9,465,000</u>	100%	<u>17,738,117</u>	100.00%	<u>17,398,295</u>	100.00%	<u>14,654,474</u>	100.00%	<u>14,084,322</u>	100.00%
<b>COST OF GOODS SOLD</b>	<u>8,518,500</u>	90%	<u>14,974,966</u>	84.42%	<u>15,070,142</u>	86.62%	<u>12,791,732</u>	87.29%	<u>12,298,073</u>	87.32%
<b>GROSS PROFIT</b>	<u>946,500</u>	10%	<u>2,763,151</u>	15.58%	<u>2,328,153</u>	13.38%	<u>1,862,742</u>	12.71%	<u>1,786,249</u>	12.68%
<b>GENERAL &amp; ADMINISTRATIVE EXPENSE</b>	638,888	6.75%	1,227,284	6.92%	1,035,949	5.95%	985,745	6.73%	792,635	5.63%
<b>SALES EXPENSES</b>	811,151	8.57%	1,266,466	7.14%	1,201,924	6.91%	892,137	6.09%	874,164	6.21%
<b>NET INCOME FROM OPERATIONS</b>	<u>-503,538</u>	-5.32%	<u>269,401</u>	1.52%	<u>90,280</u>	0.52%	<u>-15,140</u>	-0.10%	<u>119,450</u>	0.85%
<b>MISC INCOME</b>	12,000	0.12%	84,720	0.48%	92,679	0.53%	98,171	0.67%	19,299	0.14%
<b>GAIN/LOSS ON SALE OF ASSETS</b>	0	0.00%	2,237	0.01%	17,481	0.10%	18,193	0.12%	8,324	0.06%
<b>TOTAL OTHER INCOME</b>	<u>12,000</u>	0.12%	<u>86,957</u>	0.49%	<u>110,160</u>	0.63%	<u>116,364</u>	0.79%	<u>27,623</u>	0.20%
<b>NET INCOME BEFORE TAXES</b>	-479,876	-5.07	356,358	2.01%	200,440	1.15%	101,224	0.69%	147,073	1.04%
<b>TAX ENTRIES</b>				0.00%	-76,567	-0.44%	-30,638	-0.21%	-38,229	-0.27%
<b>NET INCOME AFTER TAXES</b>	<u>-479,876</u>	-5.07	<u>356,358</u>	2.01%	<u>123,873</u>	0.71%	<u>70,586</u>	0.48%	<u>108,844</u>	0.77%

**FOOTNOTES:**

1 THE FISCAL YEAR END IS OCTOBER 31

2 PROJECTED OCT. 98- ACTUAL NUMBERS ARE USED THROUGH SEPT. AND ONE MONTH IS PROJECTED.

3 PROFORMA OCT. 99 - NUMBERS ARE BASED ON RETAINING ALL 101 EMPLOYEES ..OF WHICH 48 WORK IN THE FLOW BOY PLANT.

4 \*\* THESE THREE AREAS OF SALES WILL BE EFFECTED

**ATTACHMENT "B-1"**

**DAN HILL & ASSOCIATES, INC.**  
**BALANCE SHEET**

	PROFORMA 1999	PROJECTED 1998	ACTUAL 1997	ACTUAL 1996	ACTUAL 1995
<b>CURRENT ASSETS</b>					
CASH	-163,000	25,614	166,165	69,187	9,316
CUSTOMER DEPOSITS	0	-23,050	-37,144	-6,795	0
ACCOUNTS RECEIVABLE	483,000	864,933	822,624	1,188,813	1,172,540
NOTES RECEIVABLE	0	0	0	159,946	209,946
EMPLOYEE RECEIVABLE	1,000	2,406	1,526	1,152	1,022
PREPAID INSURANCE ACCTS.	20	20	1,278	1,464	-7,494
PREPAID INCOME TAX	0	75,383	0	11,994	17,880
INVENTORY-NORMAN	1,350,601	1,424,000	1,884,265	1,836,132	1,293,353
INVENTORY-FAIRVIEW	1,200,000	1,101,000	1,168,275	1,445,255	968,459
DEPOSITS	4,000	44,783	4,409	4,409	4,409
<b>TOTAL CURRENT ASSETS</b>	<u>2,875,621</u>	<u>3,515,089</u>	<u>4,011,399</u>	<u>4,711,557</u>	<u>3,669,432</u>
<b>FIXED ASSETS</b>					
LAND	0	0	0	213,360	213,360
AUTOMOBILES	191,298	191,298	227,934	229,581	270,708
OFFICE FURN & FIXTURES	154,956	154,956	151,955	148,634	143,187
MACHINERY & EQUIPMENT	749,935	749,935	712,506	683,594	666,372
JIGS & FIXTURES	91,553	91,553	91,553	91,554	48,395
BUILDINGS	0	0	0	1,205,568	1,165,474
LEASE HOLD IMPROVEMENTS	300,000	280,059	87,464		
RESEARCH & DEVELOPMENT	0	35,000			
ACCUM. DEPRECIATION	-1,114,637	-1,053,637	-991,663	-1,510,860	-1,406,279
<b>TOTAL FIXED ASSETS</b>	<u>373,105</u>	<u>449,164</u>	<u>279,749</u>	<u>1,061,431</u>	<u>1,101,217</u>
<b>TOTAL ASSETS</b>	<u>3,248,726</u>	<u>3,964,253</u>	<u>4,291,148</u>	<u>5,772,988</u>	<u>4,770,649</u>
<b>CURRENT LIABILITIES</b>					
ACCOUNTS PAYABLE	480,000	850,000	826,940	1,170,224	748,370
NOTES PAYABLE-BANKS	53,341	53,341	56,051	105,391	84,000
NOTES PAYABLE-CREDIT LINE	950,000	650,652	1,143,099	1,699,585	1,106,577
NOTES PAYABLE-INSTALLMENTS	6,993	21,993	36,171	46,643	40,229
ACCRUED ACCOUNTS	70,000	150,000	275,844	208,399	170,148
DEFERRED TAXES	36,762	36,762	39,917	40,985	39,700
<b>TOTAL CURRENT LIABILITIES</b>	<u>1,597,096</u>	<u>1,762,748</u>	<u>2,378,022</u>	<u>3,271,227</u>	<u>2,189,025</u>
LONG TERM NOTES PAYABLE	355,800	425,800	493,779	1,206,287	1,356,735
<b>TOTAL LIABILITIES</b>	<u>1,952,896</u>	<u>2,188,548</u>	<u>2,871,801</u>	<u>4,477,514</u>	<u>3,545,761</u>
<b>STOCKHOLDERS' EQUITY</b>					
COMMON STOCK	270	270	270	270	270
ADDITIONAL PAID IN CAPITAL	17,450	17,450	17,450	17,450	17,450
RETAINED EARNINGS	1,757,985	1,401,627	1,277,754	1,207,168	1,098,324
NET PROFIT/LOSS	-479,875	356,358	123,873	70,586	108,844
<b>TOTAL STOCKHOLDERS' EQUITY</b>	<u>1,295,830</u>	<u>1,775,705</u>	<u>1,419,347</u>	<u>1,295,474</u>	<u>1,224,888</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u>3,248,726</u>	<u>3,964,253</u>	<u>4,291,148</u>	<u>5,772,988</u>	<u>4,770,649</u>

ATTACHMENT B

# DAN HILL & ASSOCIATES, INC.

dba Flow Boy Mfg.  
dba Total Truck & Trailer  
dba Mabar

P.O. Box 720660  
Norman, OK 73070-4500

405-329-3765  
FAX 405-329-8588

## INTER OFFICE MEMO

TO : TERRY HILL, PRESIDENT  
FROM: DAVID GRIFFIS, VICE PRESIDENT  
SUBJECT: UNDER RIDE BUMPER  
DATE: JANUARY 26, 1998

NHTSA ACCEPTED OUR PETITION FOR ONE YEAR EXEMPTION FROM COMPLIANCE WITH FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 224 ON THIS DATE. WE HAVE ONE YEAR TO COMPLY.

I HAVE INSTRUCTED JOSHI TO GET GOING ON FINDING SOURCES WHO COULD MANUFACTURE AND CERTIFY A RETRACTABLE BUMPER FOR OUR LIVE BOTTOM SEMI-TRAILERS.

JOSHI SAID HE WILL TALK WITH HIS EX-PROFESSOR OF ENGINEERING AT THE UNIVERSITY TO SEE IF ANY OF HIS PHD CANDIDATES WOULD BE WILLING TO TAKE ON THE PROJECT.

I'LL KEEP YOU INFORMED.

DG



CC: HEMKUMAR JOSHI, ENGINEER

ATTACHMENT "C"

# DAN HILL & ASSOCIATES, INC.

dba Flow Boy Mfg.  
dba Total Truck & Trailer  
dba Mabbar

P.O. Box 720660  
Norman, OK 73070-4500

405-329-3765  
FAX 405-329-8588

## INTER OFFICE MEMO

TO: TERRY HILL, PRESIDENT  
FROM: DAVID GRIFFIS, VICE PRESIDENT  
SUBJECT: UNDER RIDE BUMPER  
DATE: JANUARY 26, 1998

JOSHI HAS LOCATED A COUPLE OF COMPANIES TO INVESTIGATE THE FEASIBILITY TO MANUFACTURE AND CERTIFY A RETRACTABLE BUMPER FOR OUR LIVE BOTTOM SEMI-TRAILERS.

ATTACHED ARE BROCHURES OF EACH COMPANY. HOPE TECHNICAL SAYS THEY WILL HAVE A BOOTH AT THE MID-AMERICA TRUCK SHOW IN LOUISVILLE, KENTUCKY IN MARCH.

I PLAN TO BE AT THE SHOW, DO YOU WANT TO GO AND MEET THESE PEOPLE? I'M GETTING AN UNEASY FEELING WITH JOSHI, THERE IS NO WAY HE HAS THE CAPABILITY TO ENGINEER A BUMPER TO MEET THE SPECIFICATIONS THAT THE FEDERAL GOVERNMENT IS REQUIRING ON STANDARDS 223 AND 224.

ONE YEAR IS GOING TO BE OVER WITH BEFORE WE KNOW IT. THE GENERATION "X" PROJECT IS UNDER WAY. THIS TRAILER CANNOT BE DESIGNED WITH OUT THE BUMPER. AT THIS POINT OF THE PROJECT WITH THE UNDER RIDE BUMPER, OUTSIDE SOURCING IS OUR ONLY PRAYER.

AS USUAL, I'LL KEEP YOU INFORMED.

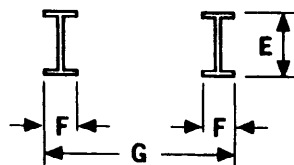
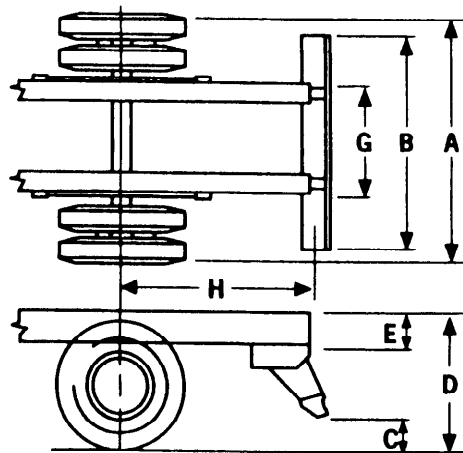
DG



ATTACHMENT **"D"**

# Vehicle Specification

(Please complete the appropriate details)



'I' BEAM CHASSIS

Options: Audible Impact Warning  
Sens-n-Stop

CODE	DESCRIPTION	DIMENSION
A	Max. Width over tires	
B	Min. Beam width (A - 8.00")	
C	Ground Clearance (22" max.)	
D	Unladen height to top of chassis	
E	Depth of chassis	
F	Width of chassis frame rail	
G	Chassis width to outside	
H	Center of rear axle to end of chassis (if slider, give rear most dimension and mention slider)	

The HOPE **safe-T-bar** is covered by existing patents and patents applied for.

## Other HOPE Technical Products

The HOPE anti-jackknife device has been doing an outstanding job for over thirty years. It assures that trailers do not swing out of control in the most difficult driving situations.

The HOPE Scrutineer brake system test machine is used by trailer builders and fleets to measure brake system performance. An export model for the USA is now available.

HOPE Rac-n-Roll is the answer for motor home users wanting to carry a motor scooter along. Mounted on the rear of the vehicle, it tilts down so that loading and unloading the scooter is without lifting or straining.

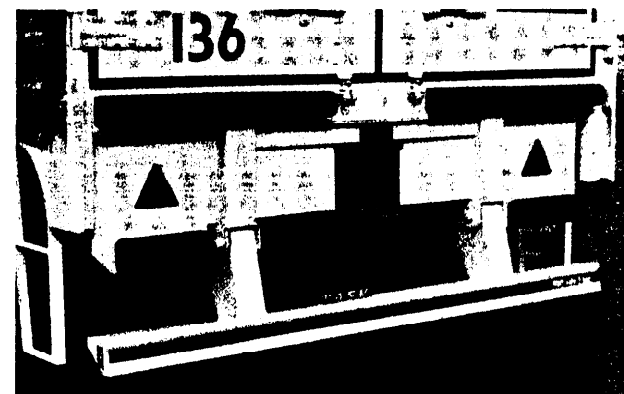


## TECHNICAL SALES & SERVICES INC.

110 Royal Place, McMurray PA 15317-3049  
Tel: 724-941-1351, 724-941-3951 • Fax: 724-941-5126  
email: Hope-S&S@cobweb.net  
website: [www.users.dircon.co.uk/~tclark](http://www.users.dircon.co.uk/~tclark).

# FMVSS 223 & 224 (Rear Impact Protection & Underride Guards)

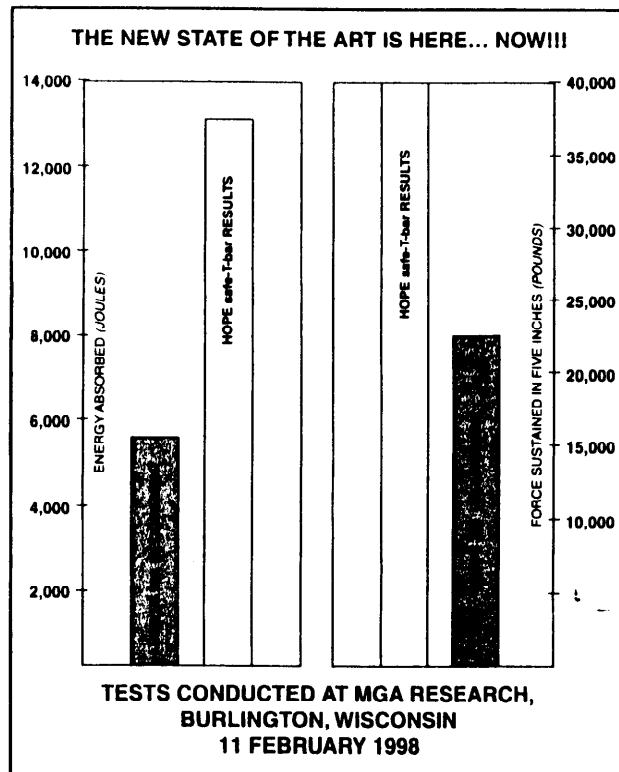
The  
new state  
of the art  
is  
here  
now!





## The HOPE safe-T-bar is SPECIAL

It complies with FMVSS 223 and 224 (effective 26 Jan 98). In fact, independent certification testing indicated **safe-T-bar** achieves twice the energy absorbtion and nearly twice the force the regulation requires.



## Easy Installation and Repair

The bolt-on design makes it easy to install, easy to adjust when impacted and easy to replace with **no welding**. Bumper maintenance can't be easier.

## Designed to Resist Dock Damage

The triangular bumper design in combination with movable energy absorbing members prevents most dock related damage. Even when it is pushed out of position, it can be reset into original position in minutes.

## Slipnot® Top Surface for Safety

A permanent slip-proof surface covers the **safe-T-bar** so climbing in and out of trailers is less hazardous.

## Conspicuity Stripe is Protected

The deep recess in the rear face of the **safe-T-bar** offers excellent protection for the conspicuity stripe. Tape scraping and rubbing damage are avoided.

## Audible Impact Option Available

This lets the driver know when dock or other contact has been made. (Available with rubber spring model only).

## "Sens-n-stop" Option Applies Brakes

Sens-n-stop will instantly apply the brakes when reversing and contact is made. The ultimate safety option. (Available with rubber spring model only).

## Triangular safe-T-bar Saves Weight

Typical savings of 37 pounds over square tubing yet the cold formed alloy steel safe-T-bar has an excellent tensile strength. Plastic end caps are also light and seal the bar against moisture.



*This photo shows the **safe-T-bar** being subjected to a force of 40,000 pounds on one side. Note the sliding plate has allowed the bumper bar to move five inches on one end (at rear of photo) while the other side remains fixed. This bar completed all testing with no damage or distortion! The bar was then repositioned as originally fitted by loosening and tightening the clamp bolts.*

## safe-T-bar is a Proven Veteran!

This product is the world's only underrun protection product with **seventeen years** of proven performance. Designed in Europe to meet EEC rear underrun regulations, it is now here in the USA with redesigned energy absorbing members to meet FMVSS 223 requirements.

## Protects the Appearance of the Trailer

When you consider the investment in your new trailer, it makes good sense to protect it. The Hope **safe-T-bar** does this reliably. Protection from just one heavy knock can payback the cost. Safeguard your corporate image and fit **safe-T-bars** to all your new trailers.

## FMVSS 223 & 224 Will Apply to Your Replacement Rear Underrun Also

For all trailers which require rear underrun protection and built on or after 26 January 1998, certified replacements must be used after damage has occurred. The HOPE **safe-T-bar** is the perfect solution to assure your vehicle meets standards as a replacement for the original weld-on type.

## Designed to Bolt-on Easily With No Welds

Welded design bumpers have served the industry well; but with required energy absorbtion it becomes necessary to look for fresh approaches to achieve the result. The bolt on design not only makes it easy to assemble and easy to repair, but it also means the various parts can be replaced separately and therefore no recourse to on-site welding (which may not be of a certified standard) is necessary.

## Installation Instructions are Provided

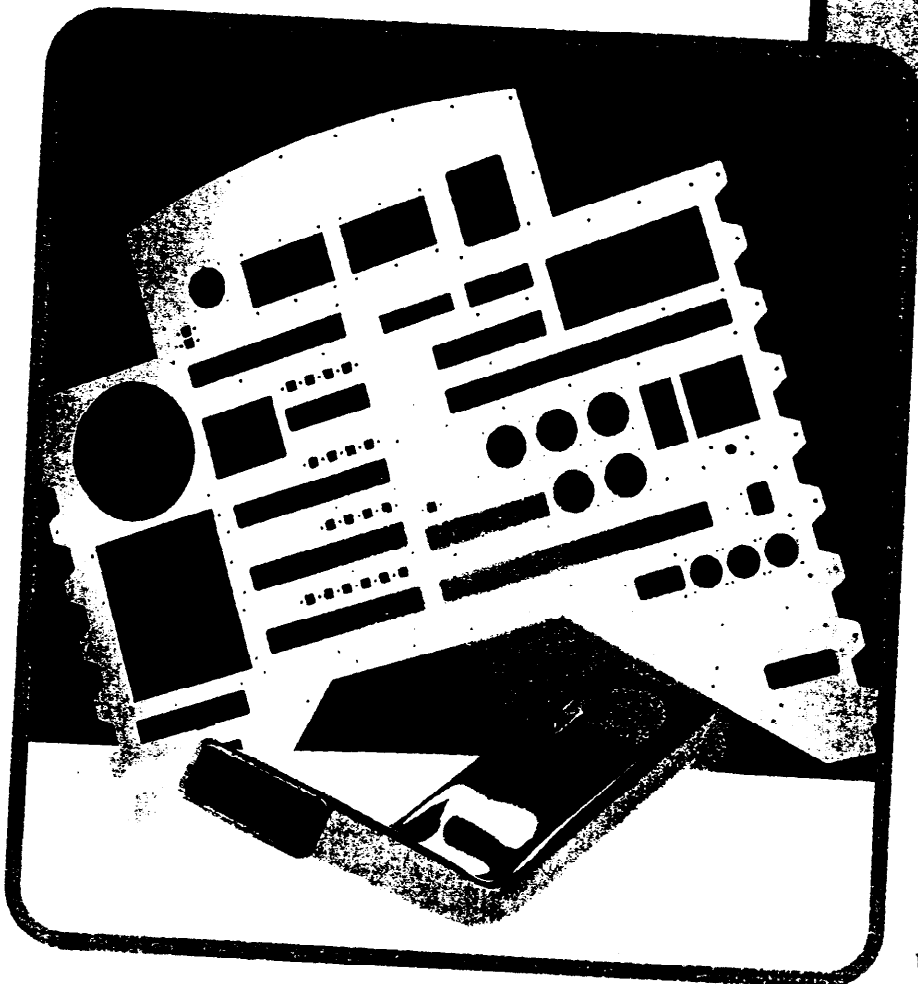
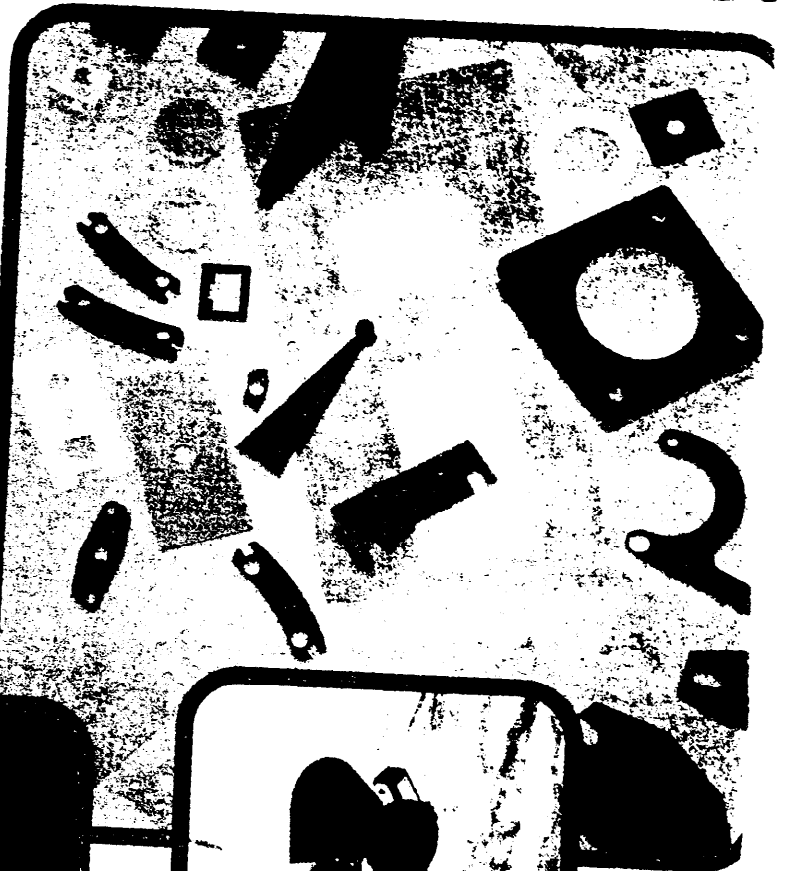
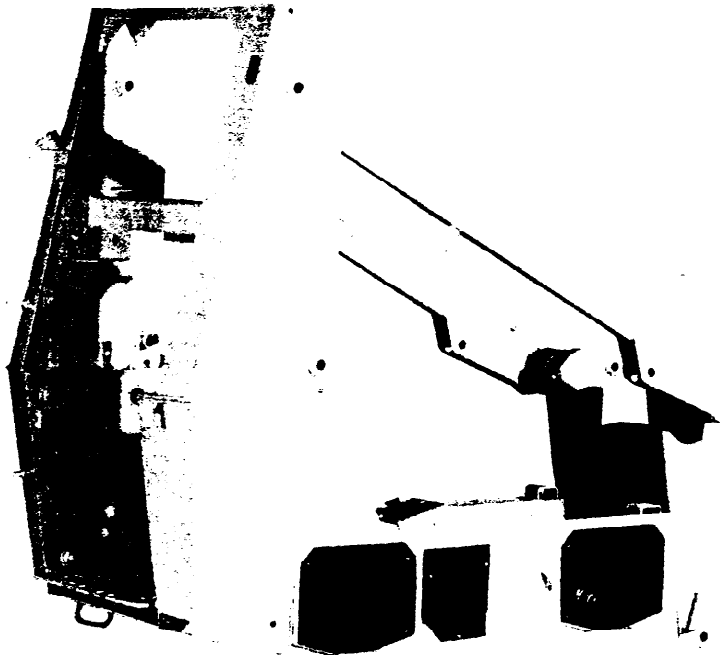
With each **safe-T-bar** schematic instructions are included. If required, a DOT certification of compliance will be furnished. Each bar has the DOT certification and serial number attached to the rear face of the bumper 12 inches in from the right end.

## Quality Built Into Every Component

The **safe-T-bar** is a development of Hope Technical Developments Ltd., an ISO 9002 registered company.

# CONTRACT MANUFACTURING

## Contract Manufacturing at its Best



At Full Vision, when we say there's no job too big or too small, we mean it! We're a contract manufacturer and we're very proud of our work. From a part to a product, if there's something you don't want to make, aren't configured to make or can't make profitably, Full Vision can fit the bill.

# DAN HILL & ASSOCIATES, INC.

dba Flow Boy Mfg.  
dba Total Truck & Trailer  
dba Mabar

P.O. Box 720660  
Norman, OK 73070-4500

405-329-3765  
FAX 405-329-8588

## INTER OFFICE MEMO

TO: JOSHI, ENGINEERING  
FROM: DAVID GRIFFIS, VICE PRESIDENT  
SUBJECT: UNDER RIDE BUMPER  
DATE: MARCH 23, 1998

TERRY AND I JUST RETURNED FROM THE MID-AMERICA TRUCK SHOW IN KENTUCKY.  
WE VISITED WITH JACK DIGGS, PRESIDENT AND CEO OF HOPE TECHNICAL.

MR. DIGGS SAID HE WAS AWARE OF OUR PROBLEM AND HE HAD ORDERED HIS AFFILIATE  
IN ENGLAND TO MANUFACTURE A MANUAL RETRACTABLE BUMPER MEETING UNITED  
STATES STANDARDS 223 AND 224.

I HAVE ASKED OUR SCOTT SMITH TO FOLLOW UP ON THIS WITH OUR AGENT PROTEUS  
EQUIPMENT.

KEEP ON TOP OF THIS MATTER, FEBRUARY 1999 IS AROUND THE CORNER.

DG



CC: TERRY HILL, PRESIDENT  
SCOTT SMITH, FLOW BOY INTERNATIONAL

ATTACHMENT **E**

# DAN HILL & ASSOCIATES, INC.

dba Flow Boy Mfg.  
dba Total Truck & Trailer  
dba Mabar

P.O. Box 720660  
Norman, OK 73070-4500

405-329-3765  
FAX 405-329-8588

## INTER OFFICE MEMO

TO: TERRY HILL, PRESIDENT

FROM: DAVID GRIFFIS, VICE PRESIDENT

*DK*

SUBJECT: UNDER RIDE BUMPER

DATE: MARCH 23, 1998

I HAVE VISITED WITH SCOTT TODAY ABOUT THE UNDER RIDE SITUATION AND OUR CONVERSATION WITH JACK DIGGS OF HOPE TECHNICAL.

HE IS GOING TO CONTACT MR. MICHAEL KELLY OF PROTEUS BY E-MAIL TODAY AND ASK THEM ABOUT THE FLOW BOY THEY ARE GOING TO PUT IN SERVICE AND TYPE OF BUMPER. THE EUROPEANS HAVE THE SAME PROBLEM WE DO AS FAR AS THE BUMPER LOCATION WITH THE RELATIONSHIP TO AN ASPHALT PAVING MACHINE.

SCOTT WILL LET US KNOW ASAP.

CC : SCOTT SMITH, FLOW BOY INTERNATIONAL

HEMKUMAR JOSHI, ENGINEERING

ATTACHMENT "E"

# DAN HILL & ASSOCIATES, INC.

dba Flow Boy Mfg.  
dba Total Truck & Trailer  
dba Mabar

P.O. Box 720660  
Norman, OK 73070-4500

405-329-3765  
FAX 405-329-8588

## INTEROFFICE CORRESPONDENCE

**TO:** Terry, David  
**FROM:** Scott  
**REFERENCE:** Under-Ride Guard in Europe  
**DATE:** March 24, 1998

I have been in contact with our distributor in England, Proteus Equipment Ltd. (Mike Kelly) and have asked them if the under-ride guard is required throughout all of Europe. Also, in my last trip to Europe, I had seen a number of trailers operating without any under-ride guards. I posed the question to Mike with regard to what machines have an exemption or are "grandfathered".

I have also asked them how they have resolved the under-ride guard dilemma on the CB-4000 that they are getting ready to put in to service.

I will keep you abreast of any response I receive from Mike Kelly on these issues.

# DAN HILL & ASSOCIATES, INC.

dba Flow Boy Mfg.  
dba Total Truck & Trailer  
dba Mabarr

P.O. Box 720660  
Norman, OK 73070-4500

405-329-3765  
FAX 405-329-8588

## INTEROFFICE CORRESPONDENCE

**TO:** Terry, David  
**FROM:** Scott  
**REFERENCE:** Under-Ride Guard in Europe  
**DATE:** April 1, 1998

I have contacted Mike Kelly at Proteus Equipment Ltd. in England to find out what they have done with their Flow Boy to deal with European under-ride guard requirements. His response came today and is attached for your review.

I would like to recommend that you consider sending myself and/or Chip Herring to England to get more data on what they are doing with the under-ride guard. The advantage in this suggestion is that we would be able to cut out a good amount of the time needed to further investigate what the Europeans are using. In our previous journey to Europe, Chip and I had an idea of what to look for and what questions to ask regarding the under-ride guard. At this point, I feel that we've learned a great deal on this issue and would all the more better equipped to know what to look for and what questions to ask to further our understanding of what the possible solutions might be.

I await your instructions on this matter.

ATTACHMENT **H**



# PROTEUS EQUIPMENT LTD

Visit us at  
<http://www.peq.co.uk>

PO Box 33, BURY ST EDMUNDS, SUFFOLK IP33 2BB ENGLAND  
Tel 01284 753954 Fax 01284 701369 E-mail: [proteusuk@msn.com](mailto:proteusuk@msn.com)

1st April 1998

Dear Mr Smith

Further to our discussions about the need for a rear under-run guard for the FLOW BOY, I confirm that this is a requirement for all "flat" trailers in European Union countries.

Tipper vehicles are exempted from this rule

We have approached the British Department of the Environment, Transport, and the Regions - DETR - in its previous guise as the Department of Transport. We pointed out that the FLOW BOY fulfilled similar functions to those of tippers - but more safely.

We pointed out that, in order for a FLOW BOY to discharge into paving machines, the under-run guard would need to be capable of being raised from its normal position. This would necessitate a man exposing himself to the danger of going to the rear of the vehicle in a busy working environment, to lift the guard.

Despite our arguments, the civil servant concerned refused to make an exemption.

Our unit goes into service on 20 April 1998.

There are tens of thousands of exempted tippers on the road and it seems to us to be disproportionate to handicap a very small number of specialised vehicles, especially when they offer major safety advantages in other aspects of their operation. We will keep you informed.

Yours sincerely



Michael F Kelly  
PROTEUS EQUIPMENT LTD

Mr Scott Smith  
FLOWBOY INTERNATIONAL  
PO Box 720660  
NORMAN  
OKLAHOMA 73070-4500  
U S A

ATTACHMENT **I**



Quality System Registered  
to ISO 9001

# DAN HILL & ASSOCIATES, INC.

dba Flow Boy Mfg.  
dba Total Truck & Trailer  
dba Mabarr

P.O. Box 720660  
Norman, OK 73070-4500

405-329-3765  
FAX 405-329-8588

## INTER OFFICE MEMO

TO: TERRY HILL  
FROM: DAVID GRIFFIS, VICE PRESIDENT  
SUBJECT: UNDER RIDE BUMPER  
DATE: MAY 20, 1998

JOSHI IS LEAVING TO GO TO INDIA TO GET MARRIED THIS WEEK. HE WILL BE GONE TILL  
END OF JUNE.

HE HAS LEFT US IN A QUANDARY ON TWO ISSUES:

1. THE UNDER RIDE BUMPER IS NOT ENGINEERED. WE ARE SOLEY RELYING ON  
THE EUROPEAN FLOW BOY TO DO OUR TESTING. THIS IS NOT ALL BAD BECAUSE  
THE EUROPEANS HAVE BEEN FIGHTING THIS ISSUE FOR YEARS.
2. THE GENERATION " X " FLOW BOY IS NOT DRAWN UP TO SCALE TO DO THE  
FINITE ELEMENT ANALYSIS AS PROMISED BY HIM. I AM FORCED TO GO TO PLAN  
B AND OUT SOURCE TO A COMPANY IN TEXAS THAT GOES BY THE NAME OF  
SPEED CONSULTING.
3. JOSHI'S EX - PROFESSOR AT THE UNIVERSITY OF OKLAHOMA PASSED ON  
HELPING US WITH THE ENGINEERING ON THE BUMPER.

YOU AND I NEED TO TALK ABOUT HIS POSITION AT FLOW BOY AND OUR DILEMMAS  
WITH THE BUMPER AND GENERATION " X " FLOW BOY.

LET ME KNOW WHEN YOU HAVE THE TIME TO DISCUSS MR. JOSHI.

DG



ATTACHMENT "J"



# DAN HILL & ASSOCIATES, INC.

dba Flow Boy Mfg.  
dba Total Truck & Trailer  
dba Mabarr

P.O. Box 720660  
Norman, OK 73070-4500

405-329-3765  
FAX 405-329-8588

## INTEROFFICE CORRESPONDENCE

**TO:** Terry, David

**FROM:** Scott

**REFERENCE:** Performance of British Under-Ride Guard (Proteus)

**DATE:** August 25, 1998

Based on our meetings here in Norman last week with Mike Kelly from Proteus Equipment Ltd. in England, I've asked Mike to draft a letter to Sam Daniels at NHTSA explaining what their experience has been up to this date with the under-ride guard on the Flow Boy operating in England.

I'll pass along a copy to you when it becomes available.

ATTACHMENT **'K'**

# DAN HILL & ASSOCIATES, INC.

dba Flow Boy Mfg.  
dba Total Truck & Trailer  
dba Mabar

P.O. Box 720660  
Norman, OK 73070-4500

405-329-3765  
FAX 405-329-8588

## INTEROFFICE CORRESPONDENCE

**TO:** Terry, David

**FROM:** Scott

**REFERENCE:** Letter from Mike Kelly at Proteus - Under-Ride Guard

**DATE:** November 3, 1998

Attached is the letter that I have received from Mike Kelly at Proteus Equipment Ltd. in England. As you'll recall, I had asked him for a summation of how their experiences have been with the under-ride guard on the Flow Boy operating in Central England. He graciously put this letter together and addressed it to Sam Daniels at NHTSA, as I requested.

The results are not good.

Mike's assessment leads me to draw an obvious conclusion that a manual, retractable under-ride guard, designed to European specs is simply not working on the Flow Boy.

ATTACHMENT 



# PROTEUS EQUIPMENT LTD

Visit us at  
http://www.pcq.co.uk

PO Box 33, BURY ST EDMUNDS, SUFFOLK IP23 2EB ENGLAND  
Tel 01284 753954 Fax 01284 701369 E-mail: proteusuk@msn.com

October 28,

1998

Dear Mr. Daniel,

Our associates at Dan Hill and Associates Inc. (dba Flow Boy Mfg.) have asked us for a summary of our experiences with the current European standard for under-ride protection on semi-trailers.

The first Flow Boy to go in to service in England on 20 April 1998. It had a "liftable" under-ride guard that proved too cumbersome to use. The concerns that led to our removing the guard at a later date are as follows:

First, the design of the guard was such that it required two men to stand at the rear of the trailer and manually lift and secure the guard so that the trailer could interface with the asphalt finishing machine. The guard was quite heavy in order to make it strong enough to absorb a reasonable impact. It was thus a strenuous task to move the guard up or down and ultimately exposed the trailer owner to any number of complaints for workers' back injuries. Along with this concern, the workers that were charged with the movement of the guard were exposed unnecessarily to the dangers of passing vehicles while they were lifting the guard up/down.

Second, the substantial weight of the guard was a problem in that it limited the amount of load that could be legally carried in the unit.

Third, the guard created a ledge where material (asphalt, sand, stone) could accumulate when the trailer was unloading. Thus, the guard created a problem in that accumulated material could fall off and damage other vehicles or pedestrians while the unit was travelling.

Fourth, the cost of the guard, for future applications, is prohibitive. All the more so for any type of a design that would be automated.

A second under-ride guard was installed immediately after the first was removed, on 4 May. It has proven to have many of the same problems as the first guard and is still unacceptable.

Because of the extreme rearward location of the tires/wheels/axles installed on the Flow Boy, the installation of an under-ride guard is redundant and unnecessary.

In England, our tippers (what you might refer to as an 'end dump trailer or body') are exempted from having under-ride guards. Because the Flow Boy concept is quite new to our market, it is incorrectly being classified as a "flat" trailer, which are required to have guards. We are working to get this classification corrected because the Flow Boy performs the identical tasks as our tippers do.

With kind regards

*Michael Kelly*  
Michael Kelly  
PROTEUS EQUIPMENT LTD.

Mr. Sam Daniel, Engineer  
NHTSA  
400 Seventh Street S.W.  
Washington, D.C. 20590  
USA

DIRECTORS: MICHAEL P KELLY, BSc (Eng), FRSA, FRIM, MIHT, AIAT, AIOQ EDWARD KELLY  
Registered in England: 2857112 Registered office: Bury St Edmunds, Suffolk



ATTACHMENT "M"

# DAN HILL & ASSOCIATES, INC.


dba Flow Boy Mfg.  
dba Total Truck & Trailer  
dba Mabar

P.O. Box 720660  
Norman, OK 73070-4500

405-329-3765  
FAX 405-329-8588

## INTER OFFICE MEMO

**TO: TERRY HILL, PRESIDENT**

**FROM: DAVID GRIFFIS, VICE PRESIDENT** 

**SUBJECT: UNDER RIDE BUMPER**

**DATE: NOVEMBER 3, 1998**

**MY WORST FEARS ARE COMING TRUE ABOUT THE ENGINEERING CAPABILITIES THAT IS AVAILABLE HERE IN THE UNITED STATES AND EUROPE CONCERNING A RETRACTABLE UNDER RIDE BUMPER THAT WILL MEET THE STANDARDS OF 223 AND 224 AND NOT INTERFER WITH THE FLOW BOY HORIZONTAL DISCHARGE SYSTEM TRYING TO UNLOAD HOT MIX ASPHALT INTO AN ASPHALT LAY DOWN MACHINE.**

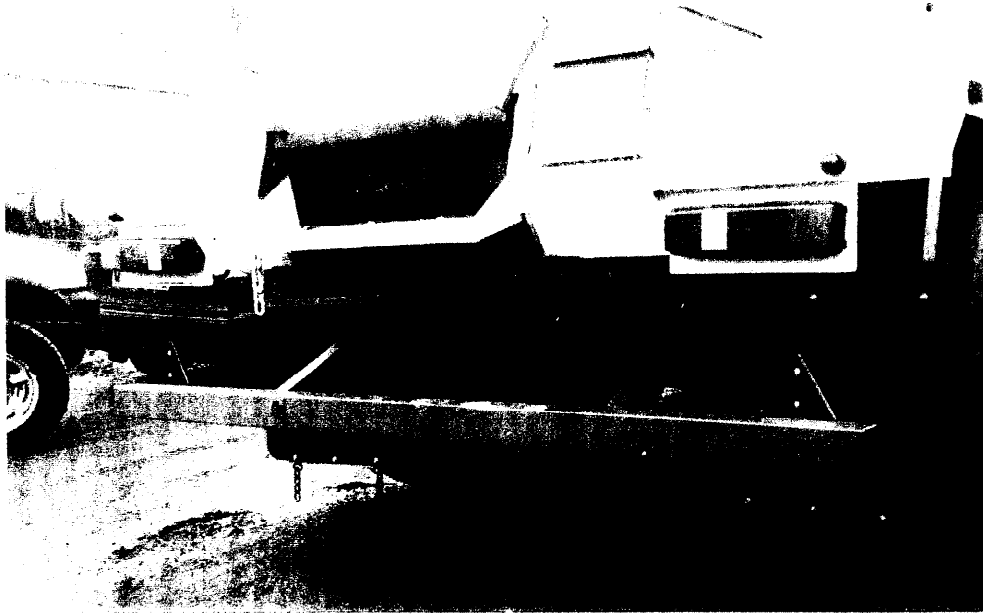
**AS YOU HAVE READ MINE AND OTHER FLOW BOY PERSONNEL MEMO'S THE PAST FEW MONTHS CONCERNING THE FEDERAL LAW TO COMPLY WITH THE NEW UNDER RIDE BUMPER, THE ONE YEAR EXEMPTION THAT WAS GRANTED LAST JANUARY WOULD GO BY FAST AND IT HAS. THERE IS NO WAY WE CAN HAVE A BUMPER READY TO BE PLACED IN THE STREAM OF COMMERCE BY FEBRUARY 1, 1999.**

**NO WAY!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!**

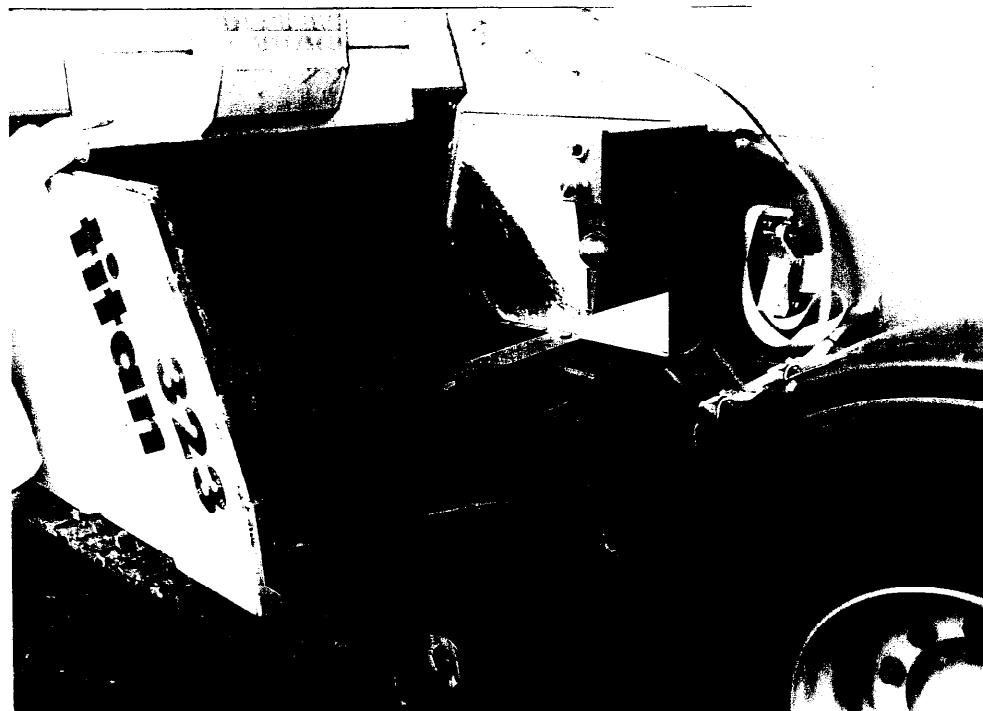
**I CONTACTED MR. DIGGS OF HOPE TECHNICAL AGAIN THIS MORNING ABOUT HIS RESULTS ON A MANUALLY RETRACTABLE BUMPER THAT HE WAS TESTING IN EUROPE AND HIS REPOSE WAS NOT FAVORABLE FOR OUR TYPE OF PROBLEM UNLOADING INTO AN ASPHALT LAY DOWN MACHINE WITH A MANUALLY RETRACTABLE BUMPER. HE SAID HIS BUMPER IS TESTED AND APPROVED TO RETRACT AND SWING-OUT INSTEAD OF SWING-IN THAT WE NEED ON THE FLOW BOY. HE ALSO ELABORATED TO ME THAT HE HAS NOT SOLD ANY YET AND HE DOES NOT KNOW WHAT HIS SELLING COST WOULD BE IF THE BUMPER WAS AVAILABLE TO PUT ON THE MARKET. HE TOLD ME HE NEEDED MORE TIME.**

**MY RECOMMENDATION IS TO ASK FOR ANOTHER EXEMPTION. DUE TO ECONOMIC HARD SHIP IT IS PLACING ON US AND THE THREAT OF LOSING OUR BUSINESS, I FEEL TWO YEARS IS NOT ASKING FOR MUCH. WE ARE IN DIRE STRAITS IF AN EXEMPTION IS NOT GRANTED. PLEASE CALL OUR CHIEF COUNSEL, MRS. CAIN AND HAVE HER MEET WITH US IMMEDIATELY BECAUSE TIME IS OF ESSENCE.**

ATTACHMENT 



**ATTACHMENT "O-1"**  
Retractable Guard before  
Interface with Paver



**ATTACHMENT "O-2"**  
Retractable Guard "Swings Out"  
During Interface with Paver



**ATTACHMENT "O-3"**  
Retractable Guard Covered  
with Accumulated Asphalt  
after Interface with Paver

	1990	1991	1992	1993	1994	1995	1996	1997	98YTD	99YTD PROFORMA
Complete trailers	149,117	122,350	165,268	185,741	234,287	279,144	202,102	233,483		
Total Vans	103,894	84,626	127,205	141,764	174,237	215,420	145,540	168,092		
Insulated	17,642	15,989	20,685	21,195	27,183	31,715	24,664	32,979		
Semi-Insulated	0	1,295	1,589	1,554	1,179	0	0	0		
Dropframe	4,475	2,245	2,745	3,334	6,681	6,481	2,889	2,527		
Livestock	1,152	1,146	2,111	1,891	2,773	1,708	1,673	7,291		
Dry Freight	72,771	60,611	96,043	107,008	129,182	167,648	109,177	112,259		
Steel	4,413	1,438	2,322	2,963	5,382	4,995	3,604	838		
Aluminum	59,726	50,496	79,432	86,202	113,268	152,685	96,409	100,824		
Less than 30 ft.	8,899	7,726	10,101	9,112	14,353	17,185	10,763	5,624		
30 ft. or Longer	50,827	42,770	69,331	77,090	98,915	135,500	85,646	95,200		
FRP	8,632	8,677	14,289	17,843	10,532	9,968	9,164	16%		
Open tops	4,095	3,340	4,032	6,782	7,239	7,868	7,137	13,036		
Tanks (total)	4,444	4,102	3,750	3,877	4,758	5,492	5,386	4,788		
Flammable liquids	1,660	1,704	1,272	1,379	1,650	1,675	1,416	1,523		
Chemical & Acid	1,456	1,408	1,561	1,707	2,131	2,405	1,779	1,903		
Asphalt	459	229	430	380	412	500	378	283		
All other tanks	869	761	487	411	565	912	1,813	1,079		
Bulk Commodity	1,540	1,009	1,175	1,057	2,665	2,589	1,969	2,535		
Pole & logging	861	276	422	937	982	1,596	952	1,743		
Platforms	13,479	11,585	13,432	16,102	21,459	22,797	18,193	24,566		
Lowbeds	8,147	6,163	6,762	6,810	10,708	13,054	11,969	12,694		
Dump Trailers	6,733	4,579	5,203	7,210	10,710	9,552	10,359	12,638		
Auto Transproters	541	470	1,313	1,315	1,766	892	865	1,163		
All other trailers	9,478	9,540	6,006	6,669	7,002	7,752	6,869	5,264		
Flow Boy's										
CB-4000	33	49	98	105	103	99	79	102	125	10
ST-1000	25	0	4	5	2	14	2	5	5	2

Oct 1, 1998